

APPENDIX A
REVISED REGULATIONS

TITLE 24 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CHAPTER X - FEDERAL INSURANCE ADMINISTRATION

[DOCKET NOS. 75-315, 75-324, 75-335]

SUBCHAPTER B - NATIONAL FLOOD INSURANCE PROGRAM

PARTS 1909 - 1925

Revision of Subchapter B

A. General.

On January 21, 1975, March 26, 1975, and June 3, 1975, notices of proposed rulemaking were published in the Federal Register (40 F.R. 3310, 40 F.R. 13420 and 40 F.R. 234873). Those notices proposed revisions to existing regulations, primarily to reflect experience gained in the operation of the Program, including the revision of flood plain management criteria, and to reflect interpretations of statutory language added since the date of the last comprehensive revision in September 1971 as recodified on December 22, 1971, at 36 F.R. 24759. Interested persons were encouraged to submit written comments or suggestions to the Administrator for a minimum of 60 days following the publication of each notice, but to the extent administratively feasible all comments (written or oral) received prior to the date of adoption of this final revised rule have been considered. In addition, public hearings on the provisions of the proposed revisions of the flood plain management criteria were conducted during June and July of 1975 in Washington, D.C.; Miami, Florida; New Orleans, Louisiana; Los Angeles, California; Kansas City, Kansas; Chicago, Illinois; and New York, New York. Persons who desired to make oral presentations were given an opportunity to do so in accordance with the notice of hearing (40 F.R. 25478).

During the course of the comment period and the hearings, approximately 500 oral and written comments were received, including an extensive submission in excess of 100 pages. Approximately 2,000 pages of transcript were generated during the public hearings. Additionally, the appropriate committees of the United States Senate and the House of Representatives held hearings during the course of the regulations drafting, and comments from Members of Congress and witnesses generated consideration of the various issues raised. In addition, the Program's operations and regulations were the subject of several comprehensive reports by the General Accounting Office. Many recommendations of those reports which concerned regulatory changes have been adopted. In addition, four statutory changes to the Program were adopted during the time the regulations were being revised (Pub. L. 94-50, Pub. L. 94-173, Pub. L. 94-198 and Pub. L. 94-375).

The Federal Insurance Administrator reviewed the extensive submissions and, in the process of this review, considered the totality of the regulations concerning the National Flood Insurance Program (42 U.S.C. Sections 4001-4128). Policy decisions were reached affecting the regulations (both substantive and procedural).

One finding agreed upon by commentators and those charged with administration of the Program is that flood plain management is an issue involving both the domestic economy and the health and welfare of the Nation. Most private citizens are unaware, unless immediately affected, of the precise nature of the issues facing the Nation on this problem. The feasibility of flood insurance as a possible solution and a viable alternative was first analyzed and legislation passed in 1956, but funds were not appropriated because the legislation did not require flood mitigation measures. A detailed study

was conducted in 1966 resulting in the report entitled Insurance and Other Programs of Financial Assistance to Flood Victims; this report from the Secretary of the Department of Housing and Urban Development to the President, as required by the Southeast Hurricane Disaster Relief Act of 1965 (Public Law 89-339, 89th Congress, H.R. 11539, November 8, 1965) was transmitted to the Congress on August 12, 1966. This document, available as a reprint from the Federal Insurance Administration, together with the report entitled A Unified National Program for Managing Flood Losses, a communication from the President of the United States transmitting a report by the Task Force on Federal Flood Control Policy on August 10, 1966, provide the basic concepts upon which the program is based. A progress report is currently under consideration by the Water Resources Council based on the experience of the past decade.

The amendment of Parts 1909 et seq., as previously proposed, are hereby adopted with certain modifications as set forth below. Because of the revision, it proved necessary to make certain conforming changes to other Parts not published for comment. In view of this, the Administrator determined that these other Parts, together with pertinent rulings and delegations should also be reviewed, and in light of experience, in some cases revised. Accordingly, this document contains all final National Flood Insurance Program regulations updated and revised in a single publication for the convenience of the public.

The discussion which follows highlights significant changes. While not an exhaustive outline, it has been prepared for the convenience of the public by reference to parts, subparts, sections, appendices, etc., in the following order: Part 1909 (General provisions), Part 1910 (Criteria for Land Management and Use), Part 1911 (Insurance coverage and rates), Part 1912

(Sale of insurance and adjustment of claims), Part 1913 [Reserved]; Part 1914 (Communities eligible for the sale of insurance), Part 1915 (Identification and mapping of special hazard areas), Part 1916 (Consultation with local officials), Part 1917 (Appeals from proposed flood elevation determinations), Part 1918 (Administrative Hearing Procedures); Part 1919 [Reserved]; Part 1920 (Procedure for map correction); Part 1921 [Reserved]; Part 1922 [Reserved]; Part 1923 [Reserved]; Part 1924 [Reserved]; Part 1925 (Exemption of state-owned properties under self-insurance plan).

Three key areas of concern were expressed in the comments. There were individuals or organizations who generally support the purposes of the Program, although suggesting technical changes; there were those who contend the Program as presently constituted is ineffective in promoting wise use of the Nation's flood plains; and, there were those who believe that the Program inappropriately restricts landowners. As the statutory intent is clear, the Federal Insurance Administration has not made changes to the basic structure of the Program, but, to the extent possible, has tried to provide equity for those individuals who have previously located in flood plains without recognizing the hazard or the economic consequences of selecting the hazardous location.

Several major policy areas are still unresolved within the Federal Insurance Administration because inconclusive or inadequate data exists upon which to promulgate appropriate regulations. These areas include (1) impact on flood hazards of wetland development; and (2) the possible necessity for coastal setback requirements where velocity waters and coastal or other shoreline wave wash is a hazard. It is the intention of the Administrator to consider rulemaking in these areas of concern if present studies on the subjects indicate a need for regulatory revisions.

While these revised regulations permit the construction of residential basements after the community has obtained an exception, the Administrator intends to issue a technical amendment to routinely permit residential basements which have been floodproofed watertight to standards specified by the FIA. In conjunction with the amendment, communities will be furnished the watertight standards and procedures for implementing them. In the interim, floodproofed residential basements are allowed, but only after the community has been granted an exception. For to do otherwise, the potential unsound construction of basements would be permitted before ascertaining how to enforce the required watertight standards.

Additionally, on March 26, 1976, a revised definition of "substantial improvement" was published in the Federal Register (Volume 41, Number 60, at 12680). A further technical amendment to that definition is included within this revised rule. Its purpose is to clarify that the term's exemption for the cost of complying with local codes is applicable to code specifications solely necessary to assure safe living conditions; and it applies to an improvement (i.e., rehabilitation) and not to repair or reconstruction. The Administrator intends to issue as proposed rulemaking further revisions on threshold criteria to the definition of "substantial improvement" as soon as an Environmental Impact Statement has been completed and filed with the Council of Environmental Quality. The proposal is expected to accomplish two major objectives. First, it will allow rehabilitation of low value structures by permitting up to \$25,000 rehabilitation without falling under the "substantial improvement" definition. Second, it will define as

"substantial improvement" any structure with repeated losses or a single loss greater than 80 percent of the market value of the structure before the loss. The accomplishment of this second objective will enable safer construction for rehabilitated structures thereby protecting the loss of life and property due to flood damages. This issuance should occur about June 15, 1977.

B. Comments.

In order to provide a vehicle for promoting increased understanding of the available choices in the Nation's flood plains, the major comments concerning the proposed rule are addressed within the preamble, with reasons given for their inclusion within the final rule or their rejection.

1909.1 Definitions

a. The following terms have been added as new definitions:

- (1) Appurtenant structure
- (2) Area of shallow flooding
- (3) Area of special flood-related erosion hazard
- (4) Contents coverage
- (5) Development
- (6) Erosion
- (7) Exception
- (8) Existing construction
- (9) Existing mobile home park or mobile home subdivision
- (10) Expansion to an existing mobile home park or mobile home subdivision
- (11) ~~First layer coverage~~
- (12) Flood elevation study
- (13) Flood plain management regulations
- (14) Flood protection system
- (15) Flood-related erosion
- (16) Flood-related erosion area
- (17) Flood-related erosion area management
- (18) Freeboard
- (19) Habitable floor
- (20) Mangrove stand
- (21) Map
- (22) Mean sea level
- (23) Mobile home

- (24) New construction
- (25) New mobile home park or mobile home subdivision
- (26) Principally above ground
- (27) Project cost
- (28) Regular program
- (29) Riverine
- (30) Sand dunes
- (31) Second layer coverage
- (32) Servicing company
- (33) Special Hazard Area

b. The following definitions have been modified:

- (1) Regulatory floodway
- (2) Start of construction
- (3) Structure
- (4) Substantial improvement

c. The following terms have been added as new definitions and appear as defined within the Flood Disaster Protection Act of 1973 (87 Stat. 980; P.L. 93-234):

- (1) Federal agency
- (2) Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions.
- (3) Financial assistance
- (4) Financial assistance for acquisition or construction purposes.

S 1909.2 Description of Program

(a) The National Flood Insurance Act of 1968 was enacted by Title XIII of the Housing and Urban Development Act of 1968 (Pub. L 90-448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in S 1909.1 of this subpart) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L 91-152, December 24, 1969). Flood-related erosion (as defined in S 1909.1 of this subpart) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L 93-234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, including mortgage loans from federally-regulated lenders, shall be provided within such an area unless the community in which the area is located is then participating in the Program.

S 1909.3 Emergency Program

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in Section 408 of the Housing and Urban Development Act of 1969 (Public Law 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new Section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program (which was extended for the period ending September 30, 1977)) does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to Part 1910 of this Subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures. Under existing law, the emergency program expires September 30, 1977.

S 1909.22 Prerequisites for the sale of flood insurance

Comments generally related to the annual report's form and requirements. For example, one suggestion was that local governments be supplied with a standard form specifying the information required. Such a form has been prepared by FIA. Another suggested that communities be required to notify FIA of annexations through their annual reports rather than immediately upon occurrence. This was rejected because FIA maps must be corrected as quickly as possible and the annexing community must adopt flood plain management regulations. Therefore, immediate notification of annexations is necessary, as specified in Sections 1909.22(a)(9)(v) and 1914.4. Additionally, objections were received concerning the language committing a community to "delineate... limits of the areas having special flood, mudslide or flood-related erosion hazards..." Some local officials believed they were committing themselves to undertake an extensive and costly effort. This provision has been modified to make it clear that a community is only required to assist the Administrator in his delineation. Finally, a new section was proposed to require specific local official action, including the adoption of procedures for public participation in and enforcement of local commitments to carry out the objectives of the Program. The Administrator encourages public participation and Part 1916 provides for specific means by which such an objective may be assured during the various stages of the preparation of a flood insurance study.

Title IV, Section 403, of the Inter-governmental Cooperation Act of 1968, and Section 204(c) of the Demonstration Cities and Metropolitan Development Act of 1966, require Federal agencies to establish notification and review

systems to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs. To further such objectives, State, regional and local viewpoints are to be solicited in order that, to the maximum extent possible and consistent with national objectives, all Federal aid for development purposes is consistent with State, regional and local comprehensive planning. Therefore, pursuant to the directive within Part I at paragraph 10 of Attachment A to Revised OMB Circular No. A-95, the Administrator has established new procedures in order to satisfy the Acts cited above.

Section 1909.22(d) requires all communities applying for participation in the emergency Flood Insurance Program to submit a copy of their application to the already established State and areawide clearinghouses. The appropriate clearinghouses may assist in assuring that the applicant's actions are consistent with State, regional and local activities relating to comprehensive planning and flood plain management. However, the Administrator may approve a community's program application before receiving comments from the clearinghouses. This is necessary to preclude the possibility of a community suffering from a disastrous flood where, but for the review by a clearinghouse, federally-subsidized flood insurance would have been available.

1909.23 Priorities for Sale of Insurance

This section has been rewritten to indicate that State governments have primary responsibility for determination of risk study priorities, subject to other administrative necessities.

1909.24 Suspension of Community Eligibility

Considerable concern was expressed over suspension of community Program eligibility for failure to either adequately adopt or enforce flood plain management regulations. Regarding suspension for failure to adopt, several provisions were offered. One suggested a hearing be provided prior to suspension. This was rejected as a new regulatory provision because the adoption of flood plain management regulations is an objective fact and, therefore, there would typically be no purpose for a hearing prior to suspension.

Another comment suggested that when a locality has failed to adopt adequate flood plain management regulations FIA notify the State in which the community is located that Program suspension will not occur if the State provides for regulations satisfying the Program's requirements within the required time period. The Administrator agrees, and has included such a new provision within the revised rule.

Concerning suspension for failure to enforce, many suggestions were proposed. Some believed that FIA should notify individual residents of their community's suspension or that Servicing Companies be required to notify policyholders or potential purchasers of the suspension. Administrative limitations prevent adoption of this policy on an individual basis. However, the Department will issue a press release to the local media explaining reasons for and effects of a community's impending suspension. It was proposed that the provision pertaining to the reinstatement procedure after a community has been suspended for failure to adequately enforce be changed from a one year waiting period to conditional reinstatement for one year. The section has been modified to permit either option. Additionally, some comments stressed the need for monitoring all participating communities in

order to maintain the credibility of the Program. Such an effort is presently under way. Finally, it was suggested that a hearing be provided prior to suspension for failure to enforce. In response to this suggestion, the section has been changed to specify that such a hearing may be conducted at the discretion of the Administrator.

PART 1910

Subpart A

1910.1 Purpose of Subpart

This section sets forth the general requirements addressed in Sections 1910.3, 1910.4 and 1910.5 (flood plain management regulations for flood-prone, mudslide-prone and flood-related erosion-prone areas). It was suggested that a provision be drafted that would specify that local or State flood plain management regulations that are more restrictive than the Program's requirements are to take precedence. Such a new provision has been included in the final rule.

1910.2 Minimum Compliance with Flood Plain Management Criteria

A Report of the Comptroller General of the United States dated September 19, 1975, recommended that the Program regulations set forth requirements in the event a community proposes to regulate development in the identified flood hazard areas based on flood data which differs, because of natural or man-made physical changes, from such data initially established by FIA. Therefore, in addition to a new Section 1915.5, which specifies procedures for notifying FIA of physical changes reflecting flooding conditions, a new paragraph has been added, at 1910.2(h), which requires the prior approval of the Administrator before a community may adopt and enforce flood plain management regulations based upon modified data reflecting man-made or natural physical changes.

For the same reasons justifying subparagraph 1909.22(d), the Administrator has included a new subparagraph 1910.2(i). Section 1910.2(i) recognizes the beneficial role of State and areawide clearinghouses in assisting communities to adopt adequate flood plain management regulations for compliance with the Regular Flood Insurance Program. This new section requires communities to notify the appropriate clearinghouses that the community has a six month period in which to adopt comprehensive flood plain management regulations consistent with the technical flood hazard data provided by the Administrator. During this period the clearinghouses may aid the community in developing its regulations and in assuring regional coordination.

S. 1910.2(i) also requires a community to submit a copy of its subsequently adopted regulations to the clearinghouses. The Administrator will not approve such regulations before the sixty day period expires in which the clearinghouses could have reviewed the community's submission. However, an exception to this sixty day period is appropriate to allow for speedier action because of the mandatory program requirement that a participating community must adopt satisfactory flood plain management regulations within six months of receiving technical data or face Program suspension, and because of the Administrator's experience that some communities submit their ordinances shortly before the deadline. Finally, clearinghouses which transmitted comments will be given a copy of the disposition by the Administrator concerning the community's regulations within seven working days of taking such actions.

1910.3 Flood Plain Management Regulations for Flood-Prone Areas

1910.3(a):

It was suggested that the regulation for building permits for all proposed construction be broadened to effectively manage the flood plains for the purpose of flood loss reduction. To accomplish this, it was proposed that permits be required for all new development, and not solely for construction presently defined as "structures." This suggestion was adopted. The regulations now specify that a community shall review all new "development," including "structures and other activities such as filling, paving, and dredging.

It was recommended and adopted that a community assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law.

It was suggested that the types of materials which would be flood-resistant or watertight be specified. This was rejected, because the requirements under Section 1910.3 are performance standards. Such standards generally do not require the use of specific construction materials in recognition of varying local conditions across the Nation and the need, therefore, to allow for flexibility.

1910.3(b)

The requirement for permit review only within identified special flood hazard areas was criticized because of the concern that uncontrolled development outside such areas can aggravate flooding conditions. However, it is the Administrator's policy that once FIA has published a map for a particular community, the requirements for the applicability of flood plain management regulations are limited to those areas specifically identified as having special flood hazards. It should be noted that FIA maps will be revised if a community's flood hazard areas are changed.

A new subsection has been added which requires all subdivision proposals and other proposed new development to include base flood elevation data within such proposals if the development encompasses 50 or more lots or 5 acres, whichever is lesser.

The proposed requirement to obtain, review and reasonably utilize any Federal, State, or other base flood elevation data, until such data has been provided by the Administrator, as criteria for elevating or floodproofing new structures was received favorably. Accordingly, this provision has been adopted as final. Under the rule, it is in the community's discretion, where conflicting flood hazard data exists before FIA has issued final base flood elevations, to reasonably select the best available data.

Several small communities suggested that they be permitted to approximate the building elevations through use of United States Geologic Survey maps if new construction takes place in the identified special flood hazard areas, in order to obtain elevation information concerning the lowest floor of the structures. This suggestion was rejected because an accurate elevation determination is necessary for flood insurance rating purposes.

In the issuance of proposed rulemaking, a provision stipulated that riverine communities were to submit to the Administrator evidence of coordination with concerned communities if any development, fill, encroachments, or alteration or relocation of a watercourse would adversely affect upstream, downstream, or adjacent communities. Although most comments concerning this provision strongly favored the concept of communities coordinating with neighboring jurisdictions, two distinct criticisms frequently were raised. First, the terms, "evidence of coordination" and "adversely affected" were believed to be too vague. Second, it was contended that the provision increased local paperwork and Federal "red tape," since, conceivably notice would be required to FIA of every small development proposal possibly adversely affecting

an upstream or downstream community miles away. Based upon these comments, this provision has been revised to remedy its subjectivity and to limit its scope to manageable proportions. It specifies in its revised form that a community is to notify adjacent communities and the State Coordinating Agency prior to any alteration or relocation of a watercourse. Additionally, a separate provision requires a community to assure that the flood carrying capacity within such an altered or relocated portion of a watercourse be maintained.

Requirements for mobile homes and for mobile home parks and mobile home subdivisions were contained within the proposed rule at Sections 1910.3(c), (d) and (e). After reviewing the written and oral comments, the Administrator has decided to incorporate into Section 1910.3(b) the mobile home standards relating to "tie downs" (anchoring) and to evacuation plans. Such standards are appropriate within all identified special flood hazard areas, even before any base flood elevations have been determined. Because the Administrator believes that a requirement to anchor mobile homes placed within flood-prone areas before the effective date of these regulations would be regulating retroactively, a suggestion to that effect was rejected. In response to comments critical of references to regulatory standards found only in sources other than the regulations themselves, the proposed regulations' reference to the mobile home "tie down" standards of the Mobile Home Manufacturer's Association has been replaced with specific and definitive standards.

1910.3(c):

Concerning the requirement to elevate the lowest floor (including basement) of all new construction and substantial improvements of residential structures within special flood hazard areas, comments were divided. Some suggested a less restrictive requirement; others advocated elevating the structure to a height exceeding the base flood level; and, still others

contended that no additional construction at all should take place in known special flood hazard areas.

The Administrator continues to believe that the requirement to elevate the lowest floor (including basement) to or above the base flood level is reasonable. Furthermore, the provisions have been retained within Section 1910.6 whereby the Administrator may grant a community an exception from the requirement, or permit a lesser standard if the community can demonstrate unique circumstances justifying the exception. Additionally, a provision is contained within Section 1910.6 allowing completely floodproofed basements if the community adopts detailed floodproofing standards satisfactory to the Administrator. For those communities electing to enact more restrictive elevation standards, a new provision has been inserted within the optional planning considerations Section 1910.22, encouraging such additional elevation above the base flood level for a safety factor (i.e., "freeboard").

Considerable comments were received concerning the requirement to elevate or floodproof all new and substantially improved nonresidential structures. They ranged from suggesting that the U. S. Army Corps of Engineer's floodproofing specifications referenced in the Program's regulations be simplified into lay terminology, to suggesting that elevation should be required for all new nonresidential structures and, therefore, the floodproofing option should not be permitted. Others remarked that floodproofing standards should be determined at the local level and that certification of the standards by a professional engineer or architect places too great a burden on small communities.

The floodproofing provision has been revised to delete any reference to the U. S. Army Corps of Engineers' floodproofing publication, while retaining the Corps' watertight floodproofing performance standard. An option has been inserted for a community to either require floodproofing certifications from a professional engineer or architect or to submit to FIA an enacted local code containing detailed floodproofing specifications satisfying the watertight performance standards.

Some commentators remarked that the application of the watertight performance standard for all nonresidential structures is too stringent, because different considerations should be given to low-value construction, and to recreational, shipping, fishing and agricultural uses. This matter is presently under study.

Regarding the requirement to elevate mobile homes to or above the base flood level, many comments were received. Strong sentiment was expressed that mobile homes placed in new sections of mobile home parks already completed be exempted from the elevation requirement. Because the suggestion would result in "grandfathering-in" the entire park, it was rejected by the Administrator. Many comments agreed that it was equitable to treat existing mobile home parks and new mobile home parks differently, as set forth in the proposed rule. It was requested that "mobile home" be defined. Finally, some comments expressed a desire for more restrictive standards. For example, there was a suggestion that community regulations should require trailer park owners to obtain permits to place trailers on a lot or to replace existing trailers upon their removal.

Few changes have been made in the final rule with respect to mobile homes. It is the Administrator's position that potential hardships for mobile homes moving into existing mobile home parks and mobile home subdivisions have been eliminated because there is no elevation requirement. However, in order to minimize the loss of life and property due to the location of new mobile home parks and mobile home subdivisions in the flood plain, the Administrator believes that the elevation requirement for new mobile homes in those parks and subdivisions is justified. Similarly, a community should be notified if an increased number of mobile homes are to be placed on lots. Therefore, a new subsection has been inserted requiring that a permit for the placement of any mobile home in a flood-prone area be obtained from the community. Finally, not only has the term "mobile home" been defined to exclude motorized vehicles and recreational trailers, but ambiguities have been addressed through the new definitions of an "existing mobile home park or mobile home subdivision," an "expansion to an existing mobile home park or mobile home subdivision," and a "new mobile home park or mobile home subdivision."

Considerable comments were received from areas of the Nation in which the primary flooding problems result from waters having very shallow depths. (These areas have further characteristics of no clearly defined channel and the path of flooding is unpredictable and indeterminate). It was suggested that such areas not be defined as having special flood hazards, thereby negating the flood plain management and mandatory flood insurance purchase requirements. As a result of the findings from a study commissioned by

the Administrator, a new procedure for shallow flooding has been adopted. Because normal construction techniques should protect against shallow flooding of less than twelve inches, IIA will no longer designate as an area of special flood hazard any area of shallow flooding of less than one foot. Therefore, no mandatory insurance purchase requirement would exist in such areas. However, areas of shallow flooding with depths from one foot to three feet will be designated as an AO Zone with an elevation depth rounded off to the nearest foot, i.e., 1, 2, or 3 feet. In the AO Zone, the purchase of flood insurance will be required and for flood plain management purposes, the lowest floor, including basement, of new residential structures must be elevated above the crown of the nearest street to an elevation equal to the depth number specified by the zone designation. For nonresidential structures, the lowest floor, including basement, must be floodproofed above the crown of the nearest street to an elevation equal to the depth number specified by the zone designation.

A number of comments were received concerning the requirement for a community to assure that the cumulative effect of all development would not increase the water surface elevation of the base flood more than one foot. Some opposed the use of any fill in the flood plain while others proposed substituting a more general standard (such as will not "measurably" increase).

Other comments expressed concern that it would be burdensome for small communities to determine the one foot rise. A study is underway which will seek to alleviate this concern. Furthermore, for all communities for which a floodway may be determined in the future, that determination will be made during

the initial Flood Insurance Study, thereby eliminating the necessity for the one foot rise calculation to be determined on a case-by-case basis. Additionally, the Administrator continues to believe that the one foot rise standard is a reasonable and sufficiently specific minimum standard. 1910.3(d):

Comments regarding a designated floodway exhibited concern and confusion on several points, in particular the delineation and permitted uses. Concerning the delineation of the floodway, a Study initially is undertaken by FIA to determine the area within the flood plain necessary to discharge the waters of the 100-year flood while allowing for only a one foot rise in flood waters. (In the event of the election for more restrictive standards, the floodway could be based upon less than a one foot rise). Afterwards, the community delineates the precise boundaries of the floodway based on the data from the Study. Once this floodway has been delineated, no development which would result in any increase in flood heights during the 100-year flood may be permitted.

Regarding development permitted in the floodway, some comments favored complete prohibition, while others encouraged development. Because the Administrator recognizes the extreme danger of building in an area reserved for discharging floods and believes that building in a floodway aggravates the extent of flooding (thereby creating additional dangers to others), the standard for not permitting any development within a floodway that would cause an increase in flood heights is appropriate. Thus, if it can be demonstrated that proposed development will not cause any increased flood heights, such development may be undertaken, but only after meeting the other applicable flood plain management requirements. Furthermore, the regulations have been

not strictly limited to a lot-size less than one-half acre; however, to justify issuing a variance for a structure to be erected on a lot exceeding that size, a community would be required to ascertain that extreme and undue hardship would result if the variance request were denied. It is FIA's position that as the lot size increases beyond one-half acre, the justification needed for a variance issuance greatly increases. This position has been reflected in the final rule.

The reporting procedure has been amended whereby communities were required to submit copies of all variances at the time they were issued. This information now will be obtained by means of the annual report that a community submits to FIA. The final rule also stipulates that historic properties are exempted from any floodproofing requirements.

In regard to the recording requirement, because normally State law prohibits recordation on the deed that a property was the subject of a variance, such recordation will not be required. However, the final rule requires that the community must notify an individual, at the time he seeks a variance, that the issuance of a variance would result in high premium rates for flood insurance coverage and increased risks to life and property.

Finally, because any obstruction in a designated floodway greatly increases the risk to loss of life and property, no variance for the placement of an obstruction in a floodway shall be allowed.

Comments concerning the exception provisions were many. One sought a distinction between "exceptions" and "variances". The former describes a waiver granted to a community by the Administrator from a particular flood plain management Program requirement if extraordinary circumstances are shown. The latter means a grant of relief by a community to an individual from the terms of the community's flood plain management regulations.

objected to FIA deciding at the Federal level the conditions for which variances should be granted. For instance, the one-half acre limitation on lot size was considered to be arbitrary. At the other extreme, some objected to any local granting of variances. One comment suggested that a variance not be issued if it would result in the placement of an obstruction in the floodway.

Other comments related to the submission of copies of all variances, the recordation requirement on all deeds, and the exemption of historic structures. The requirement that a copy of each variance issued by the community with supporting data and evidence be submitted to FIA was criticized as too bureaucratic and burdensome to smaller communities. The requirement that notice of a variance be placed on the deed or recorded with the title records received several criticisms. For instance, some asserted that this would not put a potential buyer on actual notice. Others believed that State law might not permit this form of recordation. In principle, the idea for disclosure was accepted, but the method by which it was to be implemented was questioned. In regard to the relationship between historic properties and variances, it was suggested that the floodproofing of historic properties not be required.

The intention of the proposed regulations was not to set forth absolute criteria for the granting of a variance. The community, after examining the applicant's hardships, will approve or disapprove a request. However, FIA has the authority to review the reasons for granting variances, and if the community's evidence of unusual hardship or just and sufficient cause is found wanting through a pattern of variance issuances, FIA may institute action to suspend the community. For instance, the granting of a variance is

The regulations have been clarified concerning the placement of mobile homes within the coastal high hazard area. Their placement is limited to only within existing mobile home parks and mobile home subdivisions.

Concern was expressed for the preservation of primary and secondary dunes because they were considered not only keys to the survival of the beach and coastal areas, but also protection against loss of life and property during flooding. It was also professed that vegetation in the coastal high hazard areas could greatly aid in flood mitigation. Because of such concerns, a new provision has been added to the revised rule requiring communities to prohibit the manmade alteration of sand dunes and mangrove stands. Since it has not been satisfactorily documented that other forms of physical features (including wetlands) act to reduce flood losses, FIA has commissioned a study to determine the effect of physical features in flood mitigation. If the study demonstrates that, for example, wetlands significantly mitigate flooding in coastal high hazard areas, then proposed revisions to the Program's regulations will be promulgated.

1910.4 Flood plain management criteria for mudslide (i.e., mudflow) prone areas

This section has been rewritten for clarity.

1910.5 Flood plain management criteria for flood-related erosion prone areas

This section has been rewritten for clarity.

1910.6 Variances and exceptions because of local conditions

Comments concerning the variance provisions ranged from support to opposition. Some asserted the provisions were too strict. These believed that localities should determine the standards for granting variances, and

clarified concerning the placement of mobile homes within the regulatory floodway. The placement of mobile homes is limited to only existing mobile home parks and mobile home subdivisions.

1910.3(e):

Regarding the requirement that within identified coastal high hazard areas all new structures must be elevated on and adequately anchored to pilings, opposition was expressed because of the concern that unattractive architecture would result. In order to address such concerns, the American Institute of Architects was engaged to undertake a Study, and shortly a report will be published illustrating attractive architecturally feasible means by which the elevation requirements may be satisfied. Furthermore, in response to the concerns of some that more specificity was needed to preclude the unsafe design of elevated structures in coastal high hazard areas, the revised rule stipulates that a professional engineer or architect must certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and wave wash.

The proposed rule's prohibition of fill for structural support generated great response. Some respondents stated they flatly opposed prohibiting the use of fill for structural support. At the other end of the spectrum, many comments reiterated strong support for the prohibition, and others urged that all filling should be precluded even where it is not being used for structural support. The provision is retained in the final rule. It should be noted that this provision does not change the existing regulations; its sole purpose was to clarify the uses for which fill could be utilized within the coastal high hazard area.

Overall, the exception provisions have been clarified. A provision has been added whereby the Administrator, in accordance with HUD Handbook 1390.1, shall issue an environmental clearance on an exception's impact on the natural, man-made and social environment.

The proposed provision to allow an exception for floodproofed basements generated mixed comment. Those in support believed it more rational and equitable to permit basements below the 100-year flood level as long as the watertight standards were followed and as long as sufficient justification and compelling need were demonstrated. Those in opposition believed it overly bureaucratic to require conformance with the variance procedure before a basement could be constructed. Additionally, there was additional opposition to use of the U.S. Army Corps of Engineers' publication entitled "Floodproofing Regulations".

The requirement has been deleted to obtain a variance for constructing a basement below the 100-year flood level when the community has been granted an exception for basements. The Administrator believes this action is justified because a community must not only submit technical data to satisfy the requirement that basements must be watertight in order to obtain the exception, but the community must also show that by denying the exception unusual hardships would be created. To place the additional burden of seeking a variance for each individual basement would be an unnecessary duplication. Additionally, for reasons expressed previously, the reference to the U.S. Army Corps of Engineers' publication has been eliminated. However, performance standards for floodproofed basements are included. Finally, it should be emphasized that, as mentioned previously, a technical amendment will be issued shortly permitting floodproofed residential basements without the necessity for a community-wide exception.

1910.7 Revisions of criteria for flood plain management regulations.

A comment suggested that the requirement to provide a "reasonable time" in order for a community to revise its local regulations to conform to changes in the Program's regulations be clarified. The rule has been clarified by substituting "six months from the effective date of any new regulation" for "reasonable time".

Subpart B

A new subpart B to Part 1910 has been added concerning requirements for State flood plain management regulations. This subpart, through the provisions of Sections 1910.11, 1910.12 and 1910.13 clarifies that under the Program no flood insurance may be authorized without the assurance of adequate flood plain management. Therefore, State governments must satisfy the flood plain management criteria set forth in Sections 1910.3, 1910.4 and 1910.5. This obligation applies for all State-owned properties in FIA identified special hazard areas, and is a condition both for the purchase of a Standard Flood Insurance Policy and for the approval by the Administrator, under Part 1925, of a State self-insurance plan.

It is acknowledged, however, that procedures applicable to a State government's adoption and administration of flood plain management regulations, may differ with the procedures typically utilized by local governments. With respect to the adoption of such regulations, a State may determine that enforceable standards for new construction may best be accomplished, for example, through an Executive Order, the issuance of regulations by a State agency, or the enactment of a statute by the State legislature. With respect to the administration of such regulations, one example of a mechanism by which a State government could comply with the Program standards may be illustrated by the permit requirement of Section 1910.3. A State could satisfy this review process requirement by designating the State agency currently responsible for the approval of construction on State property to additionally analyze proposals to assure compliance with the Program standards.

Subpart C

1910.22 Planning considerations for flood-prone areas

There was much support for this section. At the outset, it should be emphasized that while adoption by a community of the standards in this subpart is not mandatory, the community must completely evaluate the standards.

The section has been expanded. Because the Administrator believes that a community has an excellent opportunity after a flood disaster to undertake an affirmative program to combat future flood losses, the final rule offers suggestions in this regard.

A number of comments addressed the issue of full disclosure. While the Administrator recognizes that State law presently precludes the recordation of the granting of variances on title records, he urges that communities consider alternate means by which prospective and interested parties may be notified that certain structures are located within flood-prone areas.

Several comments were offered expressing concern that the subsidence of flood-prone properties increases the susceptibility of structures on those properties to flood damages. The Administrator concurs and suggests that, in areas subject to subsidence, new development be elevated above the base flood level equal to the expected subsidence for at least a ten year period.

It was stated previously in this preamble that a study is underway to determine the usefulness, from a flood mitigation standpoint, for setbacks within coastal high hazard areas. Until such time that a determination has been made, it is recommended that communities implement such a setback. However, in areas identified by the Administrator as subject to flood-related erosion hazards, a setback is required under the provisions of Section 1910.5 of this subchapter.

It was suggested that communities consider the requirement of additional elevation above the base flood level for new development within special flood hazard areas, in order to protect against such occurrences as wave wash and floating debris. Furthermore, this would protect against floods having a magnitude greater than the base flood and would compensate for future urban development. This suggestion has been reflected in the revised rule.

The Administrator, in his concern for the placement within any floodway or coastal high hazard area of plants and facilities in which hazardous substances are manufactured, has included a paragraph in the final rule suggesting communities consider prohibiting such placements.

1910.23 Planning consideration for mudslide (i.e.; mudflow) prone areas

This section has been rewritten for clarity.

1910.24 Planning considerations for flood-related erosion prone areas

This section has been rewritten for clarity.

1910.25 State Coordination

This section sets forth considerations which, if adopted at the State level, would enhance sound flood plain management. Such provisions, while not mandatory, are strongly urged.

A new provision has been included in the final rule which recommends that States amend their recording acts so that information relating to flood hazards and flood insurance may be made known to the public. Furthermore, it was suggested that where States have established minimum flood plain, mudslide, and flood-related erosion regulatory standards consistent with those established for eligibility in the Program, the Administrator accept the State regulations and a certificate from the State Coordinating Agency in satisfaction of local community compliance with the program regulations. This has been and continues to be FIA policy.

PART 1911

This Part, concerning coverage and rates for flood insurance, has been modified primarily for clarity. In particular, sections 1911.5(g) and 1911.5(h) have been rewritten to conform to the specific exclusions set forth in the Standard Flood Insurance Policy. Additionally, a new paragraph has been included in Section 1911.5, specifying the relationship of the agent or broker to the insurer, insured, the National Flood Insurers Association, and the Federal government.

A new provision is included in the final rule (at Section 1911.12) regarding insurance rates based on a flood protection system involving Federal funds. This section was originally issued as proposed in a separate Federal Register publication on January 21, 1975. The final rule does not materially alter the regulation as proposed. However, there was confusion expressed in the comments on the proposed regulation concerning the kinds of flood protection systems that would trigger lowered actuarial flood insurance rates. While the section applies only to flood protection systems involving Federal funds, all flood protection systems, whether they be Federal, State, local or private, are recognized by the Administrator after their completion, but only if the completed system altered 100-year flood elevations. Therefore, in such cases, FIA maps would be revised and all previously-applicable actuarial rates would be modified to reflect the changed flood risk. The new section 1911.12 applies only to flood protection systems involving Federal funds because of the passage of the Housing and Community Development Act of 1974, which added a new Section

1307(e) to Title XIII of the Housing and Urban Development Act of 1968. Through this enactment, Congress intended to permit lower actuarial flood insurance rates for circumstances in which "adequate progress" had been accomplished toward the completion of a flood protection system involving Federal funds, and for which any delay in the completion was beyond the local community's control. Many comments were received advocating that even where "adequate progress" on a flood protection system was accomplished, thereby invoking lower flood insurance rates, that all flood plain management standards based on 100-year flood elevations should remain in effect until the system is complete. The Administrator has decided to require the enforcement of the flood plain management regulations which are applicable to emergency program communities when he has determined that "adequate progress" has been accomplished toward the completion of a flood protection system involving Federal funds. The specific requirements are set forth in Section 1910.3(c)(9).

PART 1912

This Part has been rewritten for clarity. Additionally, in response to comments concerning a flood insurance premium refund where a map has been revised, thereby removing a property's flood hazard designation, a new section 1912.5, has been added. This section references the procedure by which such a premium refund may be authorized.

PART 1913

This Part is reserved, to be utilized at a later date at the Administrator's discretion.

PART 1914

This Part has been rewritten for clarity, and in particular, three Sections, 1914.3, 1914.4 and 1914.5 have been modified.

In Section 1914.3, hazard zone designations and applicable map reference symbols have been clarified. In response to comments favoring deletion from the A zone of areas having shallow flooding, the Administrator has done so for such flooding up to a depth of one foot. A new zone designated as A0 (i.e., area of shallow flooding) applies to areas for which water depths range between one and three feet. Furthermore, the Section identifies all zones in which the mandatory flood insurance purchase requirement applies (This inclusion was in response to several requests).

In Section 1914.4, the effect on community eligibility resulting from boundary changes, governmental reorganization, etc. (on which FIA has been previously silent within the regulations) has been set forth. The section discusses the consequences when a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an area within another community participating in the Program. Second, the section discusses the consequences when a community participating in the

Program acquires by means of annexation, incorporation, or otherwise, another area which was previously located in a community either participating or not participating in the Program. Third, the section discusses the consequences when an area within a community participating in the Program becomes autonomous or becomes a portion of a newly autonomous community.

In Section 1914.5, the relationship of flood insurance rates to zone designations has been clarified.

PART 1915

Comments contended that the regulations did not make allowances for notification to FIA of changes in a community's base flood elevations as a result of physical changes affecting flooding conditions. In response to such comments, as well as the previously mentioned Comptroller General's Report, a new section 1915.5 has been included. This section sets forth the procedures by which a community shall notify the Administrator of physical changes affecting flooding conditions by submitting technical or scientific data.

PART 1916

This Part has been rewritten for clarity.

PART 1917

This Part has been rewritten for clarity. In particular, the order of the provisions contained in Sections 1917.8 and 1917.9 have been reversed.

PART 1918

This Part has been rewritten for clarity.

PART 1919

This Part is reserved, to be utilized at a later date at the Administrator's discretion.

PART 1920

This Part has been rewritten for clarity. Additionally, a new section 1920.8, has been added. This section provides for a premium refund after a letter of map amendment, subject to the conditions set forth in Section 1912.5 of this subchapter.

PART 1921 -- PART 1924

These Parts are reserved, to be utilized at a later date at the Administrator's discretion.

PART 1925

A number of comments were received in response to the June 3, 1975, publication of proposed rulemaking concerning the exemption of State-owned structures and their contents under a self-insurance plan. While numerous submissions from State governments indicated that the regulation could be satisfied by such States, other comments raised specific concerns

and recommendations.

Opposition was received relating to the requirement under the proposed rule for establishing a special State insurance fund having a specified percentage of reserves based upon market value of State properties in special hazard areas. This provision has been modified in order to accommodate States with other indemnification procedures. Therefore, an enforceable commitment of funds by a State, the enforceability of which must be certified by the State's Attorney General, may be accepted by the Administrator in lieu of a self insurance fund.

Some comments objected to the inventory requirement stipulating the inclusion of both current replacement cost and present economic value of State-owned structures and their contents. In response to such concerns, the final rule has been altered to allow for the option to estimate either replacement cost or present economic value.

A concern was raised regarding the requirement to submit a record (covering a recommended period of 25-50 years) of flood loss experience. This provision has been modified to require that such a record need only reflect 5 years of flood damage experience.

A comment requested clarification of the types of properties required to be included under a State self insurance plan. The requirement applies only to those State-owned structures and their contents for which coverage could otherwise be made available under the Standard Federal Flood Insurance Policy. Part 1911 contains a discussion of the specific structures and contents that may be covered under such a Policy.

Concern was raised that a State desiring to insure its properties through a self-insurance plan would be subject to more stringent requirements than a State insuring its properties through Federal flood insurance coverage. However, in recognition of the fact that the State self-insurance option is a special arrangement to accommodate State governments, the Administrator may set reasonable conditions for his acceptance of a self-insurance plan.

A draft Environmental Impact Statement concerning the Program's regulations was filed with the Council of Environmental Quality (39 FR 43419). After an analysis of the public comments received, a final Environmental Impact Statement was prepared and filed with the Council of Environmental Quality. This document is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C.

A statement of non-major determination concerning the Program's regulations was prepared and submitted to the Council on Wage and Price Stability. Documentation for such determination is available for inspection and copying according to the rules and regulations of the Department during regular business hours in Room 6262, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C.

Effective date. This revision becomes effective on November 15, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 23, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of

authority to Federal Insurance Administrator, (34 F.R. 2680, Feb. 27, 1969)
as amended 39 F.R. 2787, Jan. 24, 1974.

Issued:

J. Robert Hunter
Acting Federal Insurance Administrator

Accordingly, effective November 15, 1976, Subchapter B of Chapter X
of Title 24 of the Code of Federal Regulations is revised to read as follows:

PART 1909--GENERAL PROVISIONS

Subpart A--General

Sec.

- 1909.1 Definitions.
- 1909.2 Description of program.
- 1909.3 Emergency program.
- 1909.4 References.

Subpart B--Eligibility Requirements

- 1909.21 Purpose of subpart.
- 1909.22 Prerequisites for the sale of flood insurance,
- 1909.23 Priorities for the sale of flood insurance
under the regular program.
- 1909.24 Suspensions of community eligibility.

— AUTHORITY: The provisions of this Part 1909 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; sec. 1361, 82 Stat. 587; 42 U.S.C. 4102.

Subpart A--General

S 1909.1 Definitions.

As used in this subchapter--

"Accounting period" means any annual period during which the Agreement is in effect. Each accounting period under the Agreement applies separately to all policies issued under the Program during the time period.

"Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. S 4001--4123.

"Actuarial rates" - see "risk premium rates"

"Administrator" means the Federal Insurance Administrator, to whom the Secretary has delegated the administration of the Program (34 FR 2680--81, February 27, 1969, as amended 39 FR 2787, January 24, 1974).

"Affiliates" means two or more associated business concerns which are or can be directly or indirectly controlled by one or more of the affiliates or by a third party.

"Agreement" means the contract entered into for the term of any accounting period by and between the Administrator and the Association whereby the Association or its subcontractors will sell policies of flood insurance under the Program within areas designated by the Administrator and will adjust and pay claims for losses arising under such policies. The Agreement is renewed automatically with respect to each subsequent accounting period unless either the Administrator or the Association gives the other written notice of intention to terminate on or before January 31 of the then current accounting period.

"Applicant" means a community which indicates a desire to participate in the Program.

"Appurtenant Structure" means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of shallow flooding" means a designated A0 or V0 Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly--defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

"Area of special flood hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed rate-making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, A0, A1-99, V0, and V1-30.

"Area of special mudslide (i.e., mudflow) hazard" is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

"Association" means the National Flood Insurers Association discussed in Parts 1911 and 1912 of this Subchapter, and is the private insurance industry pool composed of two or more of its members or any member acting for or on behalf of the Association under the Agreement.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Building" - see "structure"

"Chargeable rates" mean the rates established by the Administrator pursuant to Section 1308 of the Act for first layer limits of flood insurance on existing structures.

"Chief Executive Officer" of the community ("CEO") means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

"Coastal high hazard area" means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30.

"Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Contents coverage" is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

"Criteria" means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in Part 1910 of this Subchapter.

"Curvilinear Line" means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

"Deductible" means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

"Department" means the U.S. Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to building, mining, dredging, filling, grading, paving, excavation or drilling operations.

"Eligible community" or "participating community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

"Emergency Flood Insurance Program" or "emergency program" means the Program as implemented on an emergency basis in accordance with Section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

"Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

"Exception" means a waiver from the provisions of Part 1910 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

"Existing construction," means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRI or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

"Existing mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of flood plain management regulations adopted by a community.

"Expansion to an existing mobile home park or mobile home subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

"Existing structures" see "existing construction"

"Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

"Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System,

the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

"Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

"Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance for emergency work essential for the protection and preservation of life and property performed pursuant to the Disaster Relief Act of 1970 or any subsequent Act of Congress which supersedes or modifies the Disaster Relief Act of 1970, the Disaster Relief Act of 1974, and any subsequent act of Congress. It includes only financial assistance which is used in the acquisition or construction of property or structures insurable under the Standard Flood Insurance Policy.

"First-layer coverage" is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

"Flood" or "Flooding" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters.
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudslides (i.e., mudflows) which are proximately caused or precipitated by accumulations of water on or under the ground.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1(a) above.

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Hazard Boundary Map" (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zone A, A, and/or E.

"Flood insurance" means the insurance coverage provided under the Program.

"Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study" see "flood elevation study"

"Flood plain" or "flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent

of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

"Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

"Floodway" - see "regulatory floodway"

"Floodway encroachment lines" mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"General Counsel" means the General Counsel of the U.S. Department of Housing and Urban Development.

"Habitable Floor" means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "Habitable Floor."

"Independent scientific body" means a non-federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

"Insurance adjustment organization" means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

"Insurance company" or "insurer" means any person or organization authorized to engage in the insurance business under the laws of any State.

"Mangrove stand" means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora Mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

"Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate

Map (FIRM) for a community issued by the Federal Insurance Administration.

"Mean sea level" means the average height of the sea for all stages of the tide.

"Mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers. The term includes, but it is not limited to, the definition of "mobile home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 CFR 3282.7(a)).

"Mobile home park or mobile home subdivision" - see "existing mobile home park or mobile home subdivision" or "new mobile home park or mobile home subdivision."

"Mudslide" (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on or under the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

"Mudslide (i.e., mudflow) prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

"Mudslide (i.e., mudflow) area management" means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e. mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

"National Flood Insurers Association" is the industry flood insurance pool authorized by the Secretary in accordance with Sections 1331 and 1332 of the Act (see "Agreement" and "Association") (Ref. 42 USC 4051-4052). The Association headquarters

are currently located at 1755 South Jefferson Davis Highway, Suite 1102, Arlington, Virginia 22202 (703) 920-8830.

"New construction" means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later. For flood plain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community.

"New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of flood plain management regulations adopted by a community.

"100-year flood"-see "base flood"

"Participating community," also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

"Policy" means the Standard Flood Insurance Policy.

"Premium" means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

"Project cost" means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

"Regular Program" means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Risk premium rates" mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Second layer coverage" means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program only where authorized by the Administrator.

"Secretary" means the Secretary of Housing and Urban Development.

"Servicing company" means a corporation, partnership, association, or any other organized entity which subcontracts with the National Flood Insurers Association to service insurance policies under the National Flood Insurance Program for a particular area.

"Sheet flow area"-see "area of shallow flooding"

"Special Hazard Area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1-99, V0, V1-30, M or E.

"Standard Flood Insurance Policy" means the flood insurance policy issued by the National Flood Insurers Association pursuant to Federal statutes and regulations.

"Start of construction" means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent

construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

"State" means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

"State coordinating agency" means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

"Storm cellar" means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

"Structure" means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home. "Structure" for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Subsidized rates" - mean the rates established by the Administrator involving in the aggregate a subsidization by the Federal government.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief by a community from the terms of a flood plain management regulation.

"Water surface elevation" means the projected heights in relation to Mean Sea Level reached by floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

S 1909.2 Description of Program

(a) The National Flood Insurance Act of 1968 was enacted by Title XIII of the Housing and Urban Development Act of 1968 (Pub. L 90-448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in S 1909.1 of this subpart) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L 91-152, December 24, 1969). Flood-related erosion (as defined in S 1909.1 of this subpart) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L 93-234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, including mortgage loans from federally-regulated lenders, shall be provided within such an area unless the community in which the area is located is then participating in the Program.

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at Part 1910 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

(c) Minimum requirements for adequate flood plain management regulations are set forth in S 1910.3 for flood-prone areas, in S 1910.4 for mudslide (i.e., mudflow) areas and in S 1910.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

S 1909.3 Emergency Program

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in Section 408 of the Housing and Urban Development Act of 1969 (Public Law 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new Section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program (which was extended for the period ending September 30, 1977) does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to Part 1910 of this Subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures. Under existing law, the emergency program expires September 30, 1977.

S 1909.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

(1) National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), Pub. L 90-448, Approved August 1, 1968, 42 U.S.C. 4001 et seq.

(2) Housing and Urban Development Act of 1969 (Pub. L 91-152, Approved December 24, 1969).

(3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Pub. L 93-234, Approved December 31, 1973.

(4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Pub. L 93-383, Approved August 22, 1974.

(5) Public Law 94-375 (effective August 3, 1976).

(6) The above statutes are included in 42 U.S.C. 4001 et seq.

(b) The following are references relevant to the National Flood Insurance Program:

(1) Executive Order 11296 (Evaluation of Flood Hazard in Locating Federally-Owned or Financed Buildings, Roads, and other Facilities, and in Disposing of Federal Lands and Properties, dated August 10, 1966 (31 F.R. 10663-64, August 11, 1966).

(2) The Flood Control Act of 1960 (Pub. L 86-645).

(3) Title II, Section 314 of Title III and Section 406 of Title IV of the Disaster Relief Act of 1974 (Pub. L 93-288).

- (4) Coastal Zone Management Act (Pub. L 92-583), as amended Pub. L 94-370.
- (5) Water Resources Planning Act (Pub. L 89-90), as amended Pub. L 94-112 (October 16, 1975).
- (6) Title I, National Environmental Policy Act (Pub. L 91-190).
- (7) Land and Water Conservation Fund Act (Pub. L 89-578), and subsequent amendments thereto.
- (8) Water Resources Council, Principals and Standards for Planning, Water and Related Land Resources (38 F.R. 24778-24869, September 10, 1973).
- (9) Executive Order 11593 (Protection and Enhancement of the Cultural Environment), dated May 13, 1971 (36 F.R. 8921, May 15, 1971).
- (10) 89th Cong., 2nd Session, H.D. 465.
- (11) Required land use element for comprehensive planning assistance under Section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR Section 600.72).
- (c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to the mandatory purchase of flood insurance under Section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (39 F.R. 26186-26193, July 17, 1974; 40 F.R. 16710, April 14, 1975; 40 F.R. 54277-54278, November 21, 1975; and 41 F.R. 2426, January 16, 1976.

Subpart B -- Eligibility Requirements

S 1909.21 Purpose of subpart

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

S 1909.22 Prerequisites for the sale of flood insurance

(a) To qualify for flood insurance availability a community shall apply for the entire area within its jurisdiction, and shall submit:

(1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A copy of the flood plain management regulations the community has adopted to meet the requirements of S. 1910.3, 1910.4 and/or S 1910.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

(i) Population

(ii) Number of one to four family residences

(iii) Number of small businesses,

(iv) Number of all other structures;

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHRM's) and Flood Insurance Rate Maps (FIRM's) will be made available for public inspection;

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and State-administered flood plain management regulations;

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

- (i) Assist the Administrator at his request, in his delineation of the limits of the areas having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards;
- (ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Administrator may request;
- (iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of flood-proofing, and information on the elevation (in relation to mean sea level) of the level of the lowest habitable floor (including basement if habitable) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation

(in relation to mean sea level) to which the structure was floodproofed;

- (iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;
- (v) Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBM's and FIRM's accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section, and

(2) Designate the official responsible to submit an annual report to the Administrator concerning the community participation in the Program including, but not limited to, the development and implementation of flood plain management regulations.

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to

the Federal Insurance Administrator, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

(d) A copy of the documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted by an applicant to the appropriate State and areawide clearinghouses established in accordance with Part I of OMB Circular No. A-95 (41 F.R. 2052 - 2065, January 13, 1976). Clearinghouse review of the documents shall not be a prerequisite to the Administrator's acceptance of a community's application for the availability of flood insurance under the Emergency Program. However, clearinghouses may assist the applicant in assuring maximum consistency with State, regional and local comprehensive plans and flood plain management programs.

1909.23 Priorities for Sale of Insurance

This section has been rewritten to indicate that State governments have primary responsibility for determination of risk study priorities, subject to other administrative necessities.

1909.24 Suspension of Community Eligibility

Considerable concern was expressed over suspension of community Program eligibility for failure to either adequately adopt or enforce flood plain management regulations. Regarding suspension for failure to adopt, several provisions were offered. One suggested a hearing be provided prior to suspension. This was rejected as a new regulatory provision because the adoption of flood plain management regulations is an objective fact and, therefore, there would typically be no purpose for a hearing prior to suspension.

Another comment suggested that when a locality has failed to adopt adequate flood plain management regulations FIA notify the State in which the community is located that Program suspension will not occur if the State provides for regulations satisfying the Program's requirements within the required time period. The Administrator agrees, and has included such a new provision within the revised rule.

Concerning suspension for failure to enforce, many suggestions were proposed. Some believed that FIA should notify individual residents of their community's suspension or that Servicing Companies be required to notify policyholders or potential purchasers of the suspension. Administrative limitations prevent adoption of this policy on an individual basis. However, the Department will issue a press release to the local media explaining reasons for and effects of a community's impending suspension. It was proposed that the provision pertaining to the reinstatement procedure after a community has been suspended for failure to adequately enforce be changed from a one year waiting period to conditional reinstatement for one year. The section has been modified to permit either option. Additionally, some comments stressed the need for monitoring all participating communities in

(b) A community eligible for the sale of flood insurance which fails to adequately enforce or repeals its flood plain management regulations meeting the minimum requirements set forth in Sections 1910.3, 1910.4 or Section 1910.5 shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and publication in the FEDERAL REGISTER under Part 1914 of this subchapter of its loss of eligibility for the sale of flood insurance. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management regulations adopted in compliance with the requirements of this Subpart, together with evidence of action taken by the community to abrogate, to the maximum extent possible, the action (s) which caused the suspension. In such cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may either conditionally reinstate the community's eligibility or withhold reinstatement for a period not to exceed one year from the date of his receipt of the submission.

(c) The Administrator shall promptly notify the Association of those communities whose eligibility has been suspended, and the Association shall promptly notify its servicing companies. Flood insurance shall not be sold or renewed in any suspended community until the Association is subsequently notified by the Administrator of the date of the community's formal reinstatement. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to

sale or renewal had actual notice of the ineligibility.

PART 1910-CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A--Requirements for Flood Plain Management Regulations

Sec.

- 1910.1 Purpose of subpart.
- 1910.2 Minimum compliance with flood plain management criteria.
- 1910.3 Flood plain management criteria for flood-prone areas.
- 1910.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.
- 1910.5 Flood plain management criteria for flood-related erosion-prone areas.
- 1910.6 Variances and exceptions.
- 1910.7 Revisions of Criteria for flood plain management regulations.
- 1910.3 Definitions

Subpart B--Requirements for State Flood Plain Management Regulations

- 1910.11 Purpose of subpart.
- 1910.12 Flood Plain Management Criteria for State-owned Properties in Special Hazard Areas.
- 1910.13 Noncompliance.

Subpart C--Additional Considerations in Managing Flood-Prone, Mudslide (i.e., mudflow)-Prone, and Flood-Related Erosion-Prone Areas

- 1910.21 Purpose of subpart.
- 1910.22 Planning considerations for flood-prone areas.
- 1910.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.
- 1910.24 Planning considerations for flood-related erosion-prone areas.
- 1910.25 State Coordination.
- 1910.26 Local Coordination.

AUTHORITY: The provisions of this Part 1910 issued under 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; sec. 1361, 82 Stat. 587; 42 U.S.C. 4102.

PART 1910-CRITERIA FOR LAND
MANAGEMENT AND USE

Subpart A-Requirements for Flood Plain
Management Regulations

S 1910.1 Purpose of Subpart

(a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in S1910.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in S1910.3 for flood-prone areas, S1910.4 for mudslide areas and S1910.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this Part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in subpart C of this Part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in subpart A of this Part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this Part are encouraged and shall take precedence.

S 1910.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of S 1910.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in S 1910.3(b), (c), (d), or (e) in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in S. 1910.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in S 1910.3(c), (d), or (e) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of S 1910.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of S 1910.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of S 1910.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of S 1910.5(b).

(d) Communities identified in Part 1915 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide [i.e., mudflow], and flood-related erosion hazard areas) shall adopt flood plain management regulations for each type of hazard consistent with the requirements of Ss 1910.3, 1910.4 and 1910.5.

(e) Local flood plain management regulations may be submitted to the State Coordinating Agency designated pursuant to S 1910.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual reports to the Administrator pursuant to S 1909.22(b) (2) of this subchapter shall also submit copies of each annual report to any State Coordinating Agency.

(g) A community should assure that any comprehensive plan underway within the community is consistent with the flood plain management objectives of this Part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Administrator. Without prior approval of the Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

(i) The community, upon its receipt of the data set forth in paragraph (c), (d) or (e) of Section 1910.3 or paragraph (b) of Section 1910.4 or 1910.5 of this Part, shall inform the appropriate State and areawide clearinghouse established in accordance with Part I of OMB Circular No. A-95 (41 F.R. 2052 - 2065, January 13, 1976), that the community has a period of six months in which to adopt and submit to the Administrator adequate flood plain management regulations. (The clearinghouses are encouraged to assist the community within the six month period in developing such regulations and in assuring regional coordination). The community shall submit to the appropriate State and areawide clearinghouse, concurrently with its submission to the Administrator, a copy of all adopted flood plain management regulations intended to comply with paragraphs (c), (d) or (e) of Section 1910.3 or paragraph (b) of Section 1910.4 or 1910.5 of this Part. Clearinghouse review, within a time not to exceed sixty days from the date a community submits flood plain management regulations to the clearinghouse, shall be a prerequisite to the Administrator's

acceptance of such regulations. Clearinghouse comments, or a statement by the community that no comments or recommendations have been received from the clearinghouse, should be submitted by the community to the Administrator. However, it may be necessary for the clearinghouse to review the community's regulations within a shorter time period in the event of pending action to suspend the community's Program participation, pursuant to Section 1909.24 of this Subchapter, for failure to adopt adequate flood plain management regulations within the required six months. The Administrator, within seven working days of taking a major action on the community's flood plain management submission, shall provide a copy of his disposition concerning the submission to each clearinghouse from which a comment was received.

S. 1910.3 Flood plain management criteria for flood-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special flood hazard area designations and water surface elevations have been furnished by the Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in Section 1914.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall--

(1) require permits for all proposed construction or other development in the community, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1334;

(3) review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) be constructed with materials and utility equipment resistant to flood damage, and (iii) be constructed by methods and practices that minimize flood damage;

(4) review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;

(5) require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems and;

(6) require within flood-prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) on-site waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) require permits for all proposed construction and other developments within Zone A on the community's FHBM;

(2) require the application of the standards in paragraphs (a)(2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHBM;

(3) require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State, or other source, until such other data has been provided by the Administrator, as criteria for requiring that (i) all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and (ii) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or floodproofed to or above the base flood level;

(5) For the purpose of the determination of applicable flood insurance risk premium rates within Zone A on a community's FHBM, (i) obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under Section 1909.22(a)(9)(iii);

(6) notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;

(7) assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) require that all mobile homes to be placed within Zone A on a community's FHBM shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that (i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side; (ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side; (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and (iv) any additions to the mobile home be similarly anchored;

(9) require that an evacuation plan indicating alternate vehicular access and escape routes be filed with appropriate Disaster Preparedness Authorities for mobile home parks and mobile home subdivisions located within Zone A on the community's FHBM.

(c) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones A99 zones and unnumbered A zones on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

(1) require the standards of paragraph (b) of this Section within all A1-30 zone: unnumbered A zones and AO zones, on the community's FIRM;

(2) require that all new construction and substantial improvements of residential structures within Zones A1-30 on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements and/or storm cellars in accordance with S. 1910.6(b)(3) and (3);

(3) require that all new construction and substantial improvements of nonresidential structures within Zones A1-30 on the community's FIRM (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) provide that where floodproofing is utilized for a particular structure in accordance with paragraphs (c)(3) and (c)(3) of this section or (b) (3) of Section 1910.6 either (i) a registered professional engineer or architect shall certify that the floodproofing methods are

adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under Section 1909.22(a)(9)(iii), or, (ii) a certified copy of a local regulation containing detailed floodproofing specifications which satisfy the watertight performance standards of paragraph (c)(3) of this Section or (b)(3) of Section 1910.6 shall be submitted to the Administrator for approval;

(5) require within Zones A1-30 on the community's FIRM for new mobile home parks and mobile home subdivisions, for expansions to existing mobile home parks and mobile home subdivisions, and for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, that (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten feet apart, and reinforcement is provided for pilings more than six feet above the ground level;

(6) require for all mobile homes to be placed within Zones A1-30 on the community's FIRM, but not into a mobile home park or mobile home subdivision that (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided

for piers more than six feet above ground level;

(7) require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the community's FIRM;

(8) require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the FIRM, or (ii) together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(9) require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) thru (a)(4)(i) and (b)(5) thru (b)(9) of this section;

(10) require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(d) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated A0 zones A99 zones and unnumbered A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

(1) meet the requirements of paragraphs (c)(1) through (c)(9) of this section;

(2) select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;

(3) prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(4) prohibit the placement of any mobile homes, except in an existing mobile home park or mobile home subdivision, within the adopted regulatory floodway.

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones, A99 zones and unnumbered A zones on the community's FIRM, and has identified on the community's FIRM Zone V1-30 (coastal high hazard area), the community shall:

- (1) meet the requirements of paragraphs (c)(1) through (c)(10) of this section;
- (2) for the purpose of the determination of applicable flood insurance risk premium rates within Zone V1-30 on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under Section 1909.22(a)(9)(iii);

(3) provide that all new construction within Zones V1-30 on the community's FIRM is located landward of the reach of mean high tide;

(4) provide (i) that all new construction and substantial improvements within Zones V1-30 on the community's FIRM are elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level and (ii) that a registered professional engineer or architect certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash;

(5) provide that all new construction and substantial improvements within Zones V1-30 on the community's FIRM have the space below the lowest floor free of obstructions or be constructed with "breakaway walls" intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind-driven water is minimized.

Such temporarily enclosed space shall not be used for human habitation;

(6) prohibit the use of fill for structural support of buildings within Zones V1-30 on the community's FIRM;

(7) prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1-30 on the community's FIRM;

(8) prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30 on the community's FIRM which would increase potential flood damage.

S 1910.4 Flood plain management criteria for mudslide (i.e., mudflow) areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in Section 1914.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall--

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and

quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, sub-drains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the

Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

S 1910.5 Flood plain management criteria for flood-related erosion areas.

The Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in Section 1914.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall -

(1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;

(2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

(3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Administrator has delineated Zone E on the community's FIRM, the community shall -

(1) Meet the requirements of paragraph (a) of this section; and

(2) Require a setback for all new development from the ocean, lake, bay riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

1910.6 Variances and exceptions.

(a) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in Sections 1910.3, 1910.4, and 1910.5 of this Part. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one half acre (as set forth in Paragraph (a)(2) of this Section), deviations from that limitation may occur. However, as the lot size increases beyond one half acre, the technical justification required for issuing a variance increases. The Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Administrator may take appropriate action under Section 1909.24(b). Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this Section. Procedures for the granting of variances by a community are as follows:

- (1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of Paragraphs (a)(3), (4), (5) and (6) of this Section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in Paragraph (a) (6) of this Section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual report submitted to the Administrator.

(b)(1) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion prone community must adopt and submit adequate flood plain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in Sections 1910.3, 1910.4 or Section 1910.5. However, certain exceptions from the standards contained in this subpart may be permitted where the Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and gross inequity for a particular community. Consequently, a community proposing the adoption of flood plain management regulations which vary from the standards set forth in Sections 1910.3, 1910.4, or Section 1910.5, shall explain in writing to the Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, and data with respect to the impact on public safety and the environment.

(2) The Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant impact on the human environment. The decision whether an (i) Environmental Impact Statement (EIS) or (ii) a Finding of Inapplicability is required must be made by the Environmental Clearance Officer of the initiating office with the approval of the Assistant Secretary for Community Planning and Development based on review by the Director, Office of Environmental Quality and the General Counsel (Assistant General Counsel for

Finance and Administrative Law) in accord with HUD Handbook 1390.1 (38 FR 19182, 19186), "Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality" which implements the National Environmental Policy Act of 1969 (P.L. 91-190) for HUD programs, and guidelines of the Council on Environmental Quality (40 CFR 1500). Ninety or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

(3) In accordance with paragraph (b)(1) of this section, a community may propose flood plain management regulations which adopt standards for basements below the base flood level. The Administrator may approve the proposal when the basements are to be designed so that below the base flood level the structure is watertight (i.e., completely dry without human intervention during flooding) with walls impermeable to the passage of water and structural components with the capability to resist hydrostatic and hydrodynamic loads and effects of buoyancy.

(4)—In accordance with paragraph (b)(1) of this section, a community may propose flood plain management regulations to permit storm cellars below the base flood level. The Administrator may approve the proposal for storm cellars (as defined in Section 1909.1) after the community has demonstrated an historical need for storm cellars as a means of shelter against recorded occurrences of severe tornado or similar wind storm activities in the area and based upon a community's acknowledgment that (i) all new storm cellars shall be limited to nonhabitable uses, (ii) all electrical, heating and other mechanical equipment shall be above the base flood level for all new storm cellars; and (iii) the design of storm cellars shall assure that the integrity of the main structure during time of flooding is maintained.

S. 1910.7 Revisions of criteria for flood plain management regulations.

From time to time this Part 1910 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

Section 1910.8 Definitions

This definitions set forth in Part 1909 of the subchapter are applicable to this Part.

Subpart B--Requirements for State Flood Plain Management Regulations

S. 1910.11 Purpose of this subpart.

(a) A State is considered a "community" pursuant to Section 1909.1 of this Subchapter; and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Administrator, pursuant to Part 1925 of this Subchapter, of its plan of self-insurance.

S. 1910.12 Flood Plain Management Criteria for State-owned Properties in Special Hazard Areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in Sections 1910.3, 1910.4, and 1910.5 of subpart A of this Part. A State either shall:

(1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or

(2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in Sections 1910.3, 1910.4, and 1910.5 of subpart A of this Part.

(b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in Sections 1910.3, 1910.4 and 1910.5 of subpart A of this Part may vary from the procedures by which local governments satisfy the criteria.

(c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a) (2) of this section for the property.

S. 1910.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to Section 1910.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to suspensive action pursuant to Section 1909.24. Where the State fails to adequately enforce its flood plain management regulations, the Administrator shall conduct a hearing before initiating such suspensive action.

Subpart C - Additional Considerations
in Managing Flood-Prone, Mudslide
(i.e., mudflow)-Prone and Flood-
Related Erosion-Prone Areas.

S 1910.21 Purpose of this subpart

The purpose of this subpart is to encourage the formation and adoption of overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

S. 1910.22 Planning Considerations for
flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should-

(1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;

(2) Discourage all other development;

(3) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence

of a flood disaster, each community shall consider-

- (1) Preservation of the flood-prone areas for open space purposes;
- (2) Relocation of occupants away from flood-prone areas;
- (3) Acquisition of land or land development rights for public purposes

consistent with a policy of minimization of future property losses;

- (4) Acquisition of frequently flood-damaged structures;

(c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors-

- (1) Human safety;

(2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;

(3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;

- (4) Adverse effects of flood plain development on existing development;
- (5) Encouragement of floodproofing to reduce flood damage;
- (6) Flood warning and emergency preparedness plans;
- (7) Provision for alternative vehicular access and escape routes

when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring subdividers to furnish delineations for floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan;

(14) Requirement of setbacks for new construction within Zones VI-30 on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones AI-30 and VI-30 on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

§ 1910.23 Planning consideration for
mudslide (i.e., mudflow)-prone areas.

The planning process for communities identified under Part 1915 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to § 1909.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include:

- (a) The existence and extent of the hazard;
- (b) The potential effects of inappropriate hillside development, including
 - (1) Loss of life and personal injuries, and
 - (2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;
- (c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;
- (d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filling, compacting, foundation, sewerage, drainage, sub-drainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and

subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and

(h) Provision for emergencies, including (1) warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow), (2) enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow), (3) fire prevention procedures in the event of the rupture of

gas or electrical distribution systems by mudslides, (4) provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems, (5) similar provisions for sewers which in the event of rupture pose both health and site stability hazards and (6) provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);

(i) The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

S 1910.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under Part 1915 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to S 1909.22 of this subchapter that they have flood-related erosion areas should include-

(a) The importance of directing future developments to areas not exposed to flood-related erosion;

(b) The possibility of reserving flood-related erosion-prone areas for open space purposes;

(c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;

(d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;

(e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

S 1910.25 State Coordination

(a) State participation in furthering the objectives of this part should include-

(1) Encouraging and assisting communities in qualifying for participation in the Program;

(2) Enacting where necessary, legislation to enable counties and municipalities to regulate flood, mudslide (i.e., mudflow) and flood-related erosion area development;

(3) Designating an agency of the State government to be responsible for coordinating Federal, State, and local aspects of flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management activities in the State;

(4) Assisting in the delineation of flood-related erosion areas, mudslide (i.e., mudflow) areas, riverine floodways, and coastal high hazard areas, and providing all relevant technical data to the Administrator;

(5) Establishing minimum State flood plain, mudslide (i.e., mudflow) and flood-related erosion regulatory standards consistent with those established in this Part;

(6) Guiding and assisting municipal and county public bodies and agencies in developing flood plain, mudslide (i.e., mudflow) and flood-related erosion area management plans and flood plain management regulations;

(7) Recommending priorities for ratemaking studies among those communities of the State which qualify for such studies;

(8) Communicating flood plain, mudslide (i.e., mudflow) and flood-related erosion area information to local governments and to the general public;

(9) Participating in flood, mudslide (i.e., mudflow) and flood-related erosion warning and emergency preparedness programs;

(10) Assisting communities in disseminating information on minimum elevations for structures permitted in flood plain areas having special hazards, and in disseminating other information relating to mudslide (i.e., mudflow) and flood-related erosion areas having special hazards;

(11) Advising public and private agencies (particularly those whose activities or projects might obstruct drainage or the flow of rivers or streams or increase slope instability) on the avoidance of unnecessary aggravation of flood, mudslide (i.e., mudflow) and flood-related erosion hazards;

(12) Requiring that proposed uses of flood plain, mudslide (i.e., mudflow) and flood-related erosion areas conform to standards established by State environmental and water pollution control agencies to assure that proper safeguards are being provided to prevent pollution during periods of flooding;

(13) Providing local communities with information on the Program, with particular emphasis on the coordination of State and Federal requirements pertaining to the management of flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion-prone areas;

(14) Assuring coordination and consistency of flood plain management and planning with comprehensive planning at the state, areawide and local levels;

(15) Amending state recording acts so that the following may be recorded for the public's knowledge: (i) a parcel of land and/or a structure is located within a flood-prone, mudslide (i.e., mudflow) and/or flood-related erosion prone area and (ii) a variance has been granted for building at an elevation below the base flood level, thereby resulting in increased premium rates for flood insurance under the Program.

(16) Assuring coordination between its State Coordinating Agency and any State office established to supervise state participation in the Coastal Zone Management Program;

(17) Providing notification to the Administrator in the event a participating community violates the Program's requirements;

(18) Assuring coordination efforts in the event a dispute over enactment and administration of flood plain management regulations arises between communities.

(b) For States whose flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management program substantially encompass the activities described in paragraph (a) of this Section, the Administrator shall-

(1) Give special consideration to State priority recommendations before selecting communities for ratemaking studies from the register described in Section 1909.23 of this subchapter;

(2) Seek State approval of local flood plain management regulations before finally accepting such regulations as meeting the requirements of this Part.

5 1910.26 Local Coordination

(a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;

(b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;

(c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

PART 1911 INSURANCE COVERAGE AND RATES

Sec.

- 1911.1 Purpose of Part.
- 1911.2 Definitions.
- 1911.3 Types of coverage.
- 1911.4 Limitations on coverage.
- 1911.5 Special terms and conditions.
- 1911.6 Maximum amounts of coverage available.
- 1911.7 Risk premium rate determinations.
- 1911.8 Applicability of risk premium rates.
- 1911.9 Establishment of chargeable rates.
- 1911.10 Minimum premiums.
- 1911.11 Adding coverage while policy in force.
- 1911.12 Rates based on a flood protection system involving federal funds.

AUTHORITY: The provisions of this Part 1911 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013.

S. 1911.1 Purpose of Part.

This Part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds. The specific communities eligible for coverage are designated by the Administrator from time to time as applications are approved under the emergency program and as ratemaking studies of communities are completed prior to the regular program. Lists of such communities are periodically published under Part 1914 of this subchapter.

S 1911.2 Definitions.

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

S 1911.3 Types of coverage.

Insurance coverage under the Program is available for structures and their contents. Coverage for each may be purchased separately. One policy to provide insurance for more than one structure **is** not available under the Program.

S 1911.4 Limitations on coverage.

(a) All flood insurance made available under the Program is subject-

(1) To the Act, the Amendments thereto, and the Regulations issued under the Act;

(2) To the terms and conditions of the Standard Flood Insurance Policy, which shall be approved by the Administrator for substance and form, and is subject to interpretation by the Administrator as to scope of coverage pursuant to the applicable statutes and regulations;

(3) To the specified limits of coverage set forth in the Application and Declarations page of the policy; and

(4) To the maximum limits of coverage set forth in S. 1911.6.

(b) Insurance under the Program is available only for loss due to flood, as defined in S. 1909.1 of this subchapter. The policy covers damage from a general condition of flooding in the area which results from other than natural causes, such as the breaking of a dam, but does not cover damage which results from causes on the insured's own property or within his control or from any condition which causes damage, which condition is substantially confined to the insured's premises or properties immediately adjacent thereto.

(c) The policy does not cover losses from rain, snow, sleet, hail, or water spray that do not result in a general condition of flooding. It covers losses from freezing or thawing, or from the pressure of weight of ice and water, only where they occur simultaneously with and as a part of flood damage. It covers losses from mudslide (i.e., mudflow) but does not cover damage from landslides or from earthquakes or similar earth movements which are volcanic or tectonic in origin. The policy does not cover erosion which is not flood-related, claims resulting from occurrences already in progress at

the time of the inception, date of the term of the policy, or losses caused by land slippage rather than mudslide (see definition of mudslide/mudflow in S. 1909.1 of this subchapter). Damage by seepage and sewer backup may be covered only when directly resulting from a flooding situation. Abnormal erosion caused by high water levels accompanied by violent wave action along a lake or other body of water is considered a flood (see definition of flood-related erosion in S. 1909.1 of this subchapter). However, there is no coverage where normal, continuous wave action, accompanied by erosion or the gradual and anticipated wearing away of the land is the proximate cause of property damage.

(d) The policy protects against loss to contents only at the location described in the application, except that contents necessarily removed from the premises for preservation from a flood are protected against loss or damage from flood at the new location pro rata for a period of 30 days.

S. 1911.5 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies shall be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (i.e. mudflow) or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application.

(c) Because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if he ceases to have an ownership interest in the covered property at the location described in the policy. Refunds of premiums for any other reason are subject to the conditions set forth in Section 1912.5 of this subchapter.

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) for structural losses, \$200 or 2 percent of the amount of the loss applicable to the structure, whichever is greater, and (2) for contents losses, \$200 or 2 percent of the amount of the loss applicable to the contents, whichever is greater.

(e) Payment for a loss under the policy does not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate flood occurrence, but all losses arising out of a continuous or protracted occurrence are deemed to have arisen out of a single occurrence.

(f) The insured may apply not to exceed 10 percent of the limit of liability for structural coverage on residential property to appurtenant structures and outbuildings (such as carports, garages, and guest houses).

(g) The following property and contents for residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, and coins or stamps;

(2) Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open;—

(3) Land values, lawns, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure;

(4) Animals, birds, fish, aircraft, motor vehicles including parts and equipment (other than motorized equipment pertaining to the service of the premises and not licensed for highway use), trailers on wheels, watercraft including their furnishings and equipment; or business property.

(h) The following property and contents for nonresidential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, and coins or stamps;

(2) Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially

over water; personal property in the open;

(3) Land values, lawns, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structures;

(4) Automobiles including parts and equipment, any self-propelled vehicle or machine, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured; water-craft or aircraft.

(i) The policy on an eligible property may be cancelled by the insurer only for nonpayment of premium. However, any willful misrepresentation or concealment of any material fact by the insured at any time voids the entire policy as of the date the wrongful act was committed, but does not affect coverage prior to the date of the wrongful act.

(j) The Standard Flood Insurance Policy is authorized only under terms and conditions established by Federal statute, the Program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Association or the Servicing Company.

S. 1911.6 Maximum amounts of coverage available.

(a) Except in Alaska, Hawaii, the Virgin Islands, and Guam, the maximum limits of coverage of the policy under the regular program are the following, and under the emergency program are one-half the following:

(1) For structures used for residential purposes, designed for the occupancy of a single family (including townhouses or row houses), and customarily regarded as separate structures which are either separated from other structures by standard firewalls or open space:

- (i) \$70,000 structural coverage.
 - (ii) \$20,000 contents coverage, which may be purchased by the owner or the tenant.
- (2) For dwelling properties containing more than one dwelling unit:
- (i) \$200,000 aggregate structural coverage.
 - (ii) \$20,000 aggregate per unit contents coverage.

(b) In Alaska, Hawaii, the Virgin Islands, and Guam the maximum limits of coverage under the regular program are the following, and under the emergency program are one-half the following:

(1) For structures used for residential purposes, designed for the occupancy of a single family (including townhouses or row houses), and customarily regarded as separate structures which are either separated from other structures by standard firewalls or open space:

- (i) \$100,000 structural coverage,
 - (ii) \$20,000 contents coverage, which may be purchased by the owner or the tenant.
- (2) For dwelling properties containing more than one dwelling unit:
- (i) \$300,000 aggregate structural coverage.
 - (ii) \$20,000 contents coverage for each unit, which may be purchased by the owner or the tenant;

(c) The maximum limits of coverage of the policy for churches and other properties under the regular program are the following, and under the emergency program are one-half the following:

- (1) \$200,000 aggregate structural coverage for any single structure,
- (2) \$200,000 contents coverage for each unit, which may be purchased by the owner or the tenant.

S. 1911.7 Risk premium rate determinations.

(a) Pursuant to Section 1307 of the Act, the Administrator is authorized to undertake studies and investigations to enable him to estimate the risk premium rates necessary to provide flood insurance in accordance with accepted actuarial principles, including applicable operating costs and allowances. Such rates are also referred to in this subchapter as "actuarial rates."

(b) The Administrator is also authorized to prescribe by regulation the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the Program. Such rates are referred to in this subchapter as "chargeable rates." Generally, for areas having special flood, mudslide (i.e., mudflow), and flood-related erosion hazards, chargeable rates are considerably lower than actuarial rates.

S. 1911.8 Applicability of risk premium rates.

Risk premium rates are applicable to all flood insurance made available for-

(a) Any structure, the construction or substantial improvement of which was started after December 31, 1974 or on or after the effective date of the initial FIRM, whichever is later.

(b) Coverage which exceeds the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands, and Guam (i) \$35,000 aggregate liability for any property containing only one unit, (ii) \$100,000 for any property containing more than one unit, and (iii) \$10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) \$50,000 aggregate liability for any property containing only one unit, (ii) \$150,000 for property containing more than one unit, and (iii) \$10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) \$100,000 for the structure and (ii) \$100,000 for contents of any such unit.

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this Part would exceed the risk premium rates.

§ 1911.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per \$100 of flood insurance are established as follows for all areas designated by the Administrator under Part 1914 of this subchapter for the offering of flood insurance:

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rate per year per \$100 coverage on structure	Rate per year per \$100 coverage on contents
(1) Residential _____	\$0.25	\$0.35
(2) All other (including hotels and hotels and motels with normal occupancy of less than 6 months in duration)	.40	.75

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

S 1911.10 Minimum Premiums.

The minimum premium required for any policy, regardless of the amount of coverage, is \$25. The minimum premium required for any added coverage or increase in the amount of coverage during the term of an existing policy is \$4, regardless of the unexpired term of the policy at the time of the change.

S. 1911.11 Adding coverage while policy is in force.

(a) Adding new coverage or increasing the amount of coverage in force is permitted during any policy term.

(b) The additional premium for additional coverage or an increase in the amount of coverage shall be calculated pro rata in accordance with the rates currently in force, with a minimum premium of \$4.

(c) The effective date and time of any new or added coverage, or of any increase in the amount of coverage, shall be 12:01 a.m. (standard time) of the 16th calendar day after the date of the application, provided that this waiting period is waived during the 30 day period following both the date of initial community eligibility in the emergency and regular programs.

S. 1911.12 Rates based on a flood protection system involving federal funds

(a) Where the Administrator determines that a community has made adequate progress on the construction of a flood protection system involving federal funds which will significantly limit the area of special flood hazards, the applicable risk premium rates for any property, located within a special flood hazard area intended to be protected directly by such system will be those risk premium rates which would be applicable when the system is complete.

(c) Adequate progress in paragraph (a) of this section means that the community has provided information to the Administrator sufficient to determine that substantial completion of the flood protection system has been effected because:

(1) 100 percent of the total financial project cost of the completed flood protection system has been authorized;

(2) At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;

(3) At least 50 percent of the total financial project cost of the completed flood protection system has been expended;

(4) The flood protection system's physical features are under construction and 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

(5) The community has not been responsible for any delay in the completion of the system.

(c) Each request by a community for a determination must be submitted in writing to the Engineering Division, Office of Flood Insurance, Federal Insurance Administration, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, and contain a complete statement of all relevant

facts relating to the flood protection system, including, but not limited to, supporting technical data (e.g., U.S. Army Corps of Engineers flood protection project data), cost schedules, budget appropriation data and the extent of federal funding of the system's construction. Such facts shall include information sufficient to identify all persons affected by such flood protection system or by such request: a full and precise statement of intended purposes of the flood protection system; and a carefully detailed description of such project, including construction completion target dates. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. Relevant facts reflected in documents, however, must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of paragraph (b) of this Section, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the person responsible for preparing the application for the community, the flood protection system is currently the subject matter of litigation before any Federal, state or local court or administrative agency, and the purpose of that litigation. The request must also contain a statement as to whether the community has previously requested a determination with respect to the same subject matter from the Administrator, detailing the disposition of such previous request. As documents become part of the file and cannot be returned, the original documents should not be submitted.

(d) The effective date for any risk premium rates established under this section shall be the date of final determination by the Administrator that adequate progress toward completion of a flood protection system has been made in a community.

(e) A responsible official of a community which received a determination that adequate progress has been made towards completion of a flood protection system shall certify to the Administrator annually on the anniversary date of receipt of such determination that no present delay in completion of the system is attributable to local sponsors of the system, and that a good faith effort is being made to complete the project.

(f) A community for which risk premium rates have been made available under Section 1307(e) of the National Flood Insurance Act of 1968, as amended, shall notify the Administrator if, at any time, all progress on the completion of the flood protection system has been halted or if the project for the completion of the flood protection system has been canceled.

PART 1913. RESERVED

PART 1912--SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A--Issuance of Policies

Sec.

- 1912.1 Purpose of Part.
- 1912.2 Definitions.
- 1912.3 National Flood Insurers Association.
- 1912.4 Limitations on sale of policies.
- 1912.5 Premium refund.
- 1912.6 Minimum commissions.
- 1912.7 Servicing companies.
- 1912.8 Notice to Policyholders.

Subpart B--Claims Adjustment and Judicial Review

- 1912.21 Claims adjustment.
- 1912.22 Judicial review.

AUTHORITY: The provisions of this Part 1912 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013.

Subpart A--Issuance of Policies

S. 1912.1 Purpose of Part.

The purpose of this Part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under Part 1914 of this subchapter, and to prescribe the general method by which the Administrator exercises his responsibility regarding the manner in which claims for losses are paid.

S. 1912.2 Definitions

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

S. 1912.3 National Flood Insurers Association.

(a) Pursuant to Sections 1331 and 1332 of the Act, the Administrator has entered into the Agreement with the Association to authorize it to sell flood insurance under the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) Membership in the Association shall be open to any insurance company or other insurer which--

(1) Has a license or certificate of authority to transact insurance business under the laws of any State;

(2) Has total admissible assets of at least \$1 million;

(3) Agrees to assume a minimum net loss liability of \$25,000 under policies of insurance issued in the name of the Association for each accounting period of membership;

(4) Pays an admission fee equal to \$50 for each \$25,000 of participation; and

(5) Agrees to such other reasonable conditions as the Administrator or, subject to the approval of the Administrator, as the Association may prescribe.

(c) No insurer shall be admitted to membership in the Association for a term less than a full accounting period, nor subsequent to the beginning of any accounting period as defined in S. 1909.1 of this subchapter.

(d) Under the Agreement, any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization desiring to cooperate with the Association as fiscal agent or otherwise, is permitted to do so to the maximum extent practicable. The Association will use its best efforts to arrange for the issuance of flood insurance to any person qualifying for such coverage under Parts 1911 and 1914 of this subchapter who submits an application to the Association in accordance with the terms and conditions of the Agreement.

(e) Communications concerning membership and cooperation with the association, and its operations, should be directed to the National Flood Insurers Association, 1755 South Jefferson Davis Highway, Suite 1102, Arlington, Virginia 22202, (703-920-8830).

Section 1912.4 Limitations on sale of policies.

(a) Each member of the insurance pool (i.e., the Association) authorized by 42 U.S.C. 4051-56 offering flood insurance under the Program shall be deemed to have agreed, as a condition of pool membership that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in S. 1911.6 of this subchapter, in any area the Administrator designates in Part 1914 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this Part, the Agreement, and the Standard Flood Insurance Policy. Violation of this condition shall, at the discretion of the Administrator, exclude the violator from any further membership in or cooperation with the Association or the Program. Notwithstanding any other Section of these regulations, any insurer, including members of the Association, authorized by a State insurance commissioner and on the National Association of Insurance Commissioners' Approved List may sell insurance in excess of the limits of coverage under the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this Part should be referred to the Administrator.

S. 1912.5 Premium refund

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under Part 1920 of this subchapter may cancel the policy within the current policy year provided (i) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (ii) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted.

S. 1912.6 Minimum commissions.

The earned commission which shall be paid to any property or casualty insurance agent licensed in the state in which the insured property is located with respect to each policy or renewal he duly procures for an eligible purchaser shall not be less than \$10. Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission, and no agent shall be required to return that earned commission. In the event of a premium refund because a policy has been canceled as a result of a map revision or Letter of Map Amendment, the Administrator shall reimburse the Association for the amount of the agent's previously earned commission.

S. 1912.7 Servicing Companies

The following servicing entities have been designated to act as servicing companies for the Association in the areas indicated:

SERVICING COMPANIES

ALABAMA

The Hartford Insurance Group, The Hartford Building, 100 Edgewood Avenue
Atlanta, Georgia 30301, (404) 521-2059

ALASKA

Industrial Indemnity Company of Alaska, P.O. Box 307, Anchorage, Alaska 99510, (907) 279-9441

ARIZONA

Aetna Technical Services, Inc., 3225 North Central Avenue, Phoenix, Arizona 85012, (602) 264-2621

ARKANSAS

The Travelers Indemnity Company, 700 South University, P.O. Box 51, Little Rock, Arkansas 72203, (501) 664-5085

CALIFORNIA (Northern)

Fireman's Fund American Insurance Co., P.O. Box 3136, San Francisco, California 94119 (415) 421-1676

CALIFORNIA (Southern)

Fireman's Fund American Insurance Co., P.O. Box 2323, Los Angeles, California 90051 (213) 381-3141

COLORADO

CNA Insurance, 1660 Lincoln Street-Suite 1800, Denver, Colorado 80203 (303) 861-0561

CONNECTICUT

Aetna Insurance Company, P.O. Box 1779, Hartford, Connecticut 06101 (203) 523-4861

D. C. - DISTRICT OF COLUMBIA

(See Virginia)

DELAWARE

General Accident F&L Assurance Corp., Ltd. 414 Walnut Street, Philadelphia, Pennsylvania 19106, (215) 238-5512

FLORIDA

The Travelers Indemnity Company, 1516 East Colonial Drive, Orlando, Florida 32803, (305) 896-2001

GEORGIA

The Hartford Insurance Group, The Hartford Building, 100 Edgewood Avenue, Atlanta, Georgia 30301 (404) 521-2059

HAWAII

First Insurance Co. of Hawaii, Ltd. P.O. Box 2866, Honolulu, Hawaii 96803, (808) 548-5511

IDAHO

Aid Insurance Company, Snake River Division, 1845 Federal Way, Boise, Idaho 83701, (208) 343-4931

ILLINOIS

State Farm Fire & Casualty Company 2309 East Oakland Avenue
Blomington, Illinois 61709 (309) 557-7211

INDIANA

American States Insurance Company 500 North Meridian Street
Indianapolis, Indiana 46204 (317) 262-6696

IOWA

Employers Mutual Casualty Company, P.O.
Box 884, Des Moines, Iowa 50304
(515) 280-2511

KANSAS

Royal-Globe Insurance Companies, 1125
Grand Avenue, Kansas City, Missouri
64141 (816) 842-6116

KENTUCKY

CNA Insurance, 580 Walnut Street, Suite
1000, Cincinnati, Ohio 45202
(513) 579-9000

LOUISIANA

Aetna Technical Services, Inc., P.O. Box
61003, New Orleans, Louisiana 70160
(504) 821-3626

MAINE

Commercial Union Assurance Company, c/o
Campbell, Payson & Noyes, 27 Pearl
Street, Box 527 Pearl Street Station,
Portland, Maine 04116, (207) 774-1431

MARYLAND

U.S. Fidelity & Guaranty Company, P.O.
Box 1138, Baltimore, Maryland 21203
(301) 547-3000

MASSACHUSETTS (Eastern)

Commercial Union Assurance Company, 1
Beacon Street, Boston, Massachusetts
02108, (617) 725-6128

MASSACHUSETTS (Western)

Aetna Insurance Company, P.O. Box 1779
Hartford, Connecticut 06101, (203)
523-4861

MICHIGAN

Insurance Company of North America, 900
Tower Drive, Troy, Michigan 48064
(313) 879-5250, (313) 879-5254

MINNESOTA (Eastern)

The St. Paul Companies, 60 E. Marie
Avenue, West St. Paul, Minnesota,
55118 (612) 455-6600

MINNESOTA (Western)

The St. Paul Companies, 7900 Xerxes
Avenue, South Minneapolis,
Minnesota 55431, (612) 835-2600

MISSISSIPPI

The Travelers Indemnity Company, 5360
Interstate 55 North, P.O. Box 2361,
Jackson, Mississippi 39205

MISSOURI (Eastern)

MFA Insurance Company, 1817 West
Broadway, Columbia, Missouri 65201
(314) 445-8441

MISSOURI (Western)

Royal-Globe Insurance Company, 1125
Grand Avenue, Kansas City, Missouri
64141, (816) 842-6116

MONTANA

The Home Insurance Company, 8 Third
Street, North, P.O. Box 1031
Great Falls, Montana 59401
(406) 761-8110

NEBRASKA

Royal-Globe Insurance Company, 1125
Grand Avenue, Kansas City, Missouri
64141, (816) 842-6116

NEVADA

The Hartford Insurance Group, P.O.
Box 500, Reno, Nevada 89504,
(702) 329-1061

NEW HAMPSHIRE

Commercial Union Assurance Company
1 Beacon Street, Boston, Massachu-
setts 02108, (617) 725-6128

NEW JERSEY

Great American Insurance Company, 5
Dakota Drive, Lake Success, New
York 11040, (201) 224-4200

NEW MEXICO

CNA Insurance, 1660 Lincoln Street -
Suite 1800, Denver, Colorado
80203, (303) 861-0561

NEW YORK

Great American Insurance Company, 5
Dakota Drive, Lake Success, New
York 11040, (516) 775-6900

NORTH CAROLINA

Kemper Insurance, 1229 Greenwood Cliff
Charlotte, North Carolina 28204
(704) 372-7150

NORTH DAKOTA

The St. Paul Companies, The Hamm
Building - Room 254, 408 St. Peter
Street, St. Paul, Minnesota 55102
(612) 227-9581

OHIO (Northern)

Commercial Union Insurance Company
1300 East 9th Street, Cleveland,
Ohio 44114, (216) 522-1060

OHIO (Southern)

CNA Insurance, 580 Walnut Street, Suite
1000, Cincinnati, Ohio 45202
(513) 579-9000

OKLAHOMA

Republic Vanguard Insurance Co.
P.O. Box 3000, Dallas, Texas 75221
(214) 528-0301

OREGON

State Farm Fire & Casualty Company
4600 25th Avenue, N.E., Salem,
Oregon 97303 (503) 393-0101

PENNSYLVANIA

General Accident F&L Assurance Corp., Ltd.
414 Walnut Street, Philadelphia,
Pennsylvania 19106, (215) 238-5512

PUERTO RICO

Commonwealth Insurance Company, P.O.
Box S-4471, San Juan, Puerto Rico
00905, (809) 725-5430

RHODE ISLAND

American Universal Insurance Company
144 Wayland Avenue
Providence, Rhode Island 02904
(401) 351-4600

SOUTH CAROLINA

Maryland, Casualty Company, P.O. Box
11615, Charlotte, North Carolina
28209, (704) 525-8330

SOUTH DAKOTA

The St. Paul Companies, The Hamm
Building - Room 254, 408 St. Peter
Street, St. Paul, Minnesota 55102
(612) 227-9581

TENNESSEE

CNA Insurance, P.O. Box 410, 1101
Kermit Drive, Nashville, Tennessee
37217, (615) 256-3350

TEXAS

The Home Insurance Company, 2100
Travis Street, Houston, Texas
77002, (713) 659-7525

UTAH

CNA Insurance, 1660 Lincoln Street -
Suite 1800, Denver, Colorado 80203
(303) 861-0561

VERMONT

Commercial Union Assurance Company
1 Beacon Street, Boston, Massachusetts
02108, (617) 725-6128

VIRGINIA

Insurance Company of North America
5225 Wisconsin Avenue, N.W.,
Washington, D.C. 20015, (202)
244-2000

WASHINGTON

Fireman's Fund American Insurance Co.
1000 Plaza - Building 600, 6th and
Stewart, Seattle, Washington 98101, (206) 527-3200

WEST VIRGINIA

U.S. Fidelity & Guaranty Company, 3324
McCorkle Avenue, S.E., Charleston,
West Virginia 25304, (304) 344-1692

WISCONSIN

Aetna Insurance Company, 5735 East River
Road, Chicago, Illinois 60631, (312)
693-2500

WYOMING

CNA Insurance, 1660 Lincoln Street - Suite
1800, Denver, Colorado 80203, (303) 861-0561

VIRGIN ISLANDS

(See Puerto Rico)

S. 1912.8 Notice to Policyholders.

(a) Each member of the insurance pool (i.e. the Association) offering flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. Sections 4001-4128) shall provide a notice in all flood insurance policies issued and renewed as of September 15, 1976, containing the following information:

- (1) Authority for issuance of policy.
- (2) Servicing Company's name, address and toll free telephone number.
- (3) Federal Insurance Administrator's address and toll free telephone number.

(b) Compliance with the requirements of paragraph (a) of this section will be satisfied provided the member of the insurance pool (i.e. the Association) complies with a format of notice as designated by the Administrator; and such notice shall, as a minimum, include the following information employing the same terms or substantially similar terms subject to prior approval by the Administrator:

Dear Policyholder: The attached Standard Flood Insurance Policy or its renewal, has been issued pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001-4128), by the National Flood Insurers Association in cooperation with the Federal Insurance Administration of the United States Department of Housing and Urban Development and is generally serviced by the _____
Name

The _____ or your insurance agent will assist you if you need
Name
to report a loss or if you have any questions pertaining to the premium charged or the scope of the coverage afforded under the policy. In addition, the Federal Insurance Administration (FIA) is ready to be of assistance to you in these

matters, if we or your agent cannot help you. Moreover, since the National Flood Insurance Program is intended to provide you with the highest caliber of service, FIA would welcome any suggestions you may have for improving the Program.

Please do not hesitate to write for assistance to:

Federal Insurance Administrator, Department of Housing and Urban
Development, Washington, D.C. 20410, Telephone No. 800-424-8872 or 800-424-8873.

Subpart B--Claims Adjustment and Judicial Review

S. 1912.21 Claims adjustment.

(a) In accordance with the Agreement, the Association shall arrange for the prompt adjustment and settlement of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its members, nonmember insurers, or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims. Settlements made and loss adjustment expenses incurred shall, subject to audit, be binding on the Administrator, barring a prior objection by the Administrator to the loss payment made or expense incurred.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and Parts 1911 and 1912 of this subchapter.

S. 1912.22 Judicial Review.

Upon the disallowance by the Association or its agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Association or its agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4053, institute an action on such claim against the Association, only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

Part 1914 - Communities Eligible for the Sale of Insurance.

Sec.

1914.1 Purpose of Part.

1914.2 Definitions.

1914.3 Flood Insurance Maps.

1914.4 Effect on Community's Eligibility Resulting from Boundary changes, Governmental Reorganizations, etc.

1914.5 Relationship of Rates to Zone Designations.

1914.6 List of Eligible Communities.

Authority: The provisions of this Part 1914 issued under Sec. 7(b), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1350, 82 Stat. 587; 42 U.S.C. 4101.

Section 1914.1 Purpose of Part.

(a) 42 U.S.C. Sections 4101 and 4014 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Administrator has (1) identified the areas of special flood, mudslide (i.e., mudflow) or flood-related erosion hazards within the community under Part 1915 of this subchapter; and (2) completed a risk study for the applicant community. A period of 15 years ending July 31, 1983, was allotted for this purpose. The priorities for conducting such risk studies are set forth in Section 1909.23 and 1910.25 of this subchapter. A purpose of this Part is periodically to list those communities in which the sale of insurance under the regular program has been authorized.

(b) 42 U.S.C. Section 4056 authorizes an emergency implementation of the National Flood Insurance Program whereby, for a period ending on _____ September 30, 1977, the Administrator may make subsidized coverage available to eligible communities prior to the completion of detailed risk studies for such areas. This Part also describes procedures under the emergency program and lists communities which become eligible under that program.

Section 1914.2 Definitions.

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

Section 1914.3 Flood Insurance Maps

(a) The following maps may be prepared by the Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map (FIRM)

This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. It indicates the risk premium rate zones applicable in the community and when those rates are effective. The symbols used to designate those zones are as follows:

Zone symbol

A - - - - -	Area of special flood hazard without water surface elevations determined.
A1- 99 - - - - -	Area of special flood hazard with water surface elevations determined.
A0 - - - - -	Area of special flood hazards having shallow water depths and/or unpredictable flow paths between one (1) and three (3) feet.
V1-30- - - - -	Area of special flood hazards, with velocity, that is inundated by tidal floods (coastal high hazard area).
V0 - - - - -	Area of special flood hazards having shallow water depths and/or unpredictable flow paths between one (1) and three (3) feet and with velocity.
B- - - - -	Area of moderate flood hazards.

- C ----- Area of minimal hazards.
- D ----- Area of undetermined but possible,
flood hazards.
- M ----- Area of special mudslide (i.e., mudflow)
hazards.
- N ----- Area of moderate mudslide (i.e.,
mudflow) hazards.
- P ----- Area of undetermined, but possible,
mudslide hazards.
- E ----- Area of special flood-related erosion
hazards.

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) will be designated by use of the proper symbols in combination.

(2) Flood Hazard Boundary Map (FHBM). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 1915 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1-99, A0, V1-30, V0, M, and E.

(c) The FHBM or FIRM shall be maintained for public inspection at the following locations:

(1) The Information Office of the State agency or agencies designated by statute or the respective Governors to cooperate with the Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood-prone pursuant to Part 1915;

(2) One or more official locations within the community in which flood insurance is offered, which shall be specified in Section 1914.6 at the time eligibility of the community is announced by publication in the Federal Register;

(3) The NFIA servicing company for the State or area (additional copies may be obtained from the appropriate servicing company) (See Section 1912.7);

(4) The official record copy of each official map shall be maintained in FIA files in Washington, D. C.

Section 1914.4 Effect on Community Eligibility Resulting from boundary changes, governmental reorganization, etc.

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an area within another community participating in the Program, no new flood insurance shall be made available as of the effective date of annexation until the newly acquiring community participates in the Program. Until the effective date of participation, existing flood insurance policies remain in effect until the policy's date of expiration, but shall not be renewed.

(b) When a community participating in the Program acquires by means of annexation, incorporation, or otherwise, another area which was previously located in a community either participating or not participating in the Program, the community shall have six months from the date of acquisition to formally amend its flood plain management regulations in order to include all flood-prone areas within the newly acquired area. The amended regulations shall satisfy the applicable requirements in Section 1910.3 of this subchapter based on the data previously provided by the Administrator. In the event that the newly acquired area was previously located in a community participating in the Program, the provisions of this section shall only apply if the community, upon acquisition, and pending formal adoption of the amendment to its flood plain management regulations, certifies in writing over the signature of a community official that within the newly acquired area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly-acquired area was previously located in a community not participating in the Program, the provisions of the section shall only apply if the community, upon acquisition, and pending formal adoption of the amendments to its flood plain management regulations, certifies in writing over the signature of a community official that it shall enforce within the

newly-acquired area the requirements of Section 1910.3(b) of this section. During the six month period, existing flood insurance policies shall remain in effect until their date of expiration, may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in Section 1910.3 shall result in the community's suspension from Program participation pursuant to Section 1909.24 of this subchapter.

(c) When an area previously a part of a community participating in the Program becomes autonomous or becomes a portion of a newly autonomous community resulting from boundary changes, governmental reorganization, changes in state statutes or constitution, or otherwise, such new community shall be given six months from the date of its independence to adopt flood plain management regulations within the special hazard areas subject to its jurisdiction and to submit its application for participation as a separate community in order to retain eligibility for the sale of flood insurance. The regulations adopted by such new community shall satisfy the applicable requirements in Section 1910.3 of this subchapter based on the data previously provided by the Administrator. The provisions of this section shall only apply where the new community upon the date of its independence certifies in writing over the signature of a community official that, pending formal adoption of flood plain management regulations, the flood plain management requirements previously applicable in that area remain in effect. During the six month period, existing flood insurance policies shall remain in effect until their dates of expiration, may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in Section 1910.3 shall result in the community's suspension from Program participation pursuant to Section 1909.24 of this subchapter.

(d) Where any community or any area within a community had in effect a FHBM or FIRM, but all or a portion of that community has been acquired by another community, or becomes autonomous, that map shall remain in effect until it is superseded by the Administrator, whether by republication as part of the map of the acquiring community, or otherwise.

(e) When a community described in paragraph (a), (b), (c) or (d) of this section has flood elevations in effect, no new appeal period under Parts 1915, 1917, and 1918 of this subchapter will begin except as new scientific and technical data are available.

S. 1914.5 Relationship of Rates to Zone Designations

(a) In order to expedite a community's qualification for flood insurance under the emergency program, the Administrator may authorize the sale of such insurance without designating any Zones A, M, or E within a community, provided the community has previously adopted flood plain management regulations meeting the requirements of S. 1910.3(a), S. 1910.4(a) or S. 1910.5(a) of this subchapter. When the Administrator has obtained sufficient technical information to delineate Zones A, M, or E, he shall delineate the tentative boundaries on a FHB.

(b) Upon the effective date of the FIRM, flood insurance will continue to be available throughout the entire community at chargeable rates (i.e., subsidized) for first layer coverage of existing structures, but will be only available at risk premium rates for all new construction and substantial improvements. Upon the effective date of a FIRM, second layer coverage is available only at risk premium rates for all structures; however, such rates for 1 to 4 family structures shall not exceed \$.50 per \$100 coverage.

(c) Detailed insurance information may be obtained from the servicing companies.

S. 1914.6 List of eligible communities.

The sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. Sections 4001-4128) is authorized for the communities set forth under this section. Previous listings under this Part continue in effect until revised.

Note: For references to F.R. pages showing lists of eligible communities see the list of CFR sections affected.

PART 1915--IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Sec.

1915.1 Purpose of Part.

1915.2 Definitions

1915.3 List of communities with special hazard areas (FHBMs in effect).

1915.4 List of communities with detailed engineering data (FIRM's).

1915.5 Requirement to submit new technical data.

1915.6 Administrative withdrawal of maps.

AUTHORITY: The provisions of this Part 1915 issued under Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d), Sec. 1360, 82 Stat. 587, 42 U.S.C. 4101.

S. 1915.1 Purpose of Part.

42 U.S.C. 4101 authorizes the Administrator to identify and publish information with respect to all areas within the United States having special flood, mudslide (i.e., mudflow) and flood-related erosion hazards. The purpose of this Part is to list those communities that have been identified by the Administrator as having such special flood, mudslide (i.e., mudflow) or flood-related erosion hazards. Additional communities will be added to this list from time to time as the necessary information becomes available. This Part also provides a list of communities for which detailed engineering data in the form of water surface elevation data for the flood with one percent chance of being equalled or exceeded in any given year and the flood insurance rate zones for the special hazard areas within those communities has been made available. Additionally, this Part contains information concerning the revision of Flood Hazard Boundary Maps (FHBM's) or Flood Insurance Rate Maps (FIRM's), and notice of administrative withdrawal of special flood hazard maps (i.e., FHBM's or FIRM's).

S. 1915.2 Definitions.

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

S. 1915.3 List of communities with special hazard areas (FHBM's in effect).

NOTE.--For the list of communities and the designated A, M, and E zones issued under this Section and not carried in the Code of Federal Regulations, see the List of CFR Sections Affected.

S. 1915.4 List of communities with detailed engineering data (FIRM's).

(a) This Section provides a cumulative list of communities for which the Administrator has published a FIRM, thereby usually providing water surface elevations for the special flood hazard area.

(b) The effective date of the most recent revision of the FIRM for the communities listed are entered as follows: 41 F.R. 1472.

1915.5 Requirement to Submit New Technical Data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. Within six months of the date that such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this paragraph. Such submission is necessary so that upon confirmation of those physical changes affecting flooding conditions risk premium rates and flood plain management requirements will be based upon current data

(a) The Chief Executive Officer (CEO) of a community participating in the Program shall submit to the Administrator technical or scientific information indicating that the base flood elevations on the community's FIRM do not accurately reflect flood risks as they currently exist. Such information shall include, but not necessarily be limited to:

- (1) A topographic map exhibiting ground elevation contours in greater detail than maps available at the time of the flood insurance study, or exhibiting topographic or ground elevation changes since the flood insurance study was performed; and
- (2) Hydrologic data which has become available since the flood insurance study was performed, such as photographs or historical records of a major flooding occurrence or a flood study or information developed by an appropriate authoritative source, such as a Federal or State agency, a County Water Control District, and a County, City or private registered professional engineer. Hydrologic information shall be of sufficient detail so that the hydrologic computations may be evaluated by the Administrator; or

- (3) Information about flood control projects, such as stream channelization, construction of new dams, reservoirs, artificial canals, private levees, or flood protection systems.

Such information shall:

- (i) be submitted at least six months prior to the expected completion date of the project, and
- (ii) include a complete plan of the project with cross sections and dimensions, together with a detailed map of the affected area indicating changes in base flood elevations caused by construction of the project, and
- (ii) be reflected on the community's FIRM only after the project has been completed, except as may be provided in this subchapter.

(b) The technical and scientific information indicating changes in base flood elevations shall be submitted to:

Engineering Division, Office of Flood Insurance
Federal Insurance Administration
U.S. Dept. of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D. C. 20410

(c) Upon receipt of the scientific or technical data, the Administrator shall (1) mail an acknowledgement to the CEO, and (2) notify the CEO within 90 days that:

- (i) The base flood elevations on the effective FIRM are correct and shall not be modified; or

- (ii) The flood elevations on the effective FIRM shall be modified, and new base flood elevations shall be established under the provisions of Part 1917 of this subchapter; or
- (iii) An additional 90 days is required to evaluate the scientific or technical data submitted.

S. 1915.6 Administrative withdrawal of maps.

(a) Flood Hazard Boundary Maps (FHBM's).

The following is a cumulative list of withdrawals pursuant to this Part: 40 FR 5149; 40 FR 17015; 40 FR 20798; 40 FR 46102; 40 FR 53579; 40 FR 56672; 41 FR 1478; 41 FR 5090; 41 FR 13351; 41 FR 17725.

(b) Flood Insurance Rate Maps (FIRM's).

The following is a cumulative list of withdrawals pursuant to this Part: 40 FR 17015; 41 FR 1478; 41 FR 17725.

Part 1916 Consultation with Local Officials

Sec.

1916.1 Purpose of Part.

1916.2 Definitions.

1916.3 Establishment of Community file and flood elevation study docket.

1916.4 Appointment of Consultation Coordination Officers.

1916.5 Responsibilities.

1916.6 Duties of CCO.

Authority: Sec. 205(a), 87 Stat. 983 (42 U.S.C. 4128).

S. 1916.1 Purpose of Part.

(a) The purpose of this Part is to comply with Section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. S. 4107) by establishing procedures for flood elevation determinations of Zones A1-99 and V1-30 within the community so that adequate consultation with the community officials shall be assured.

(b) The procedures in this Part shall apply when base flood elevations are to be determined or modified.

(c) The Administrator or his delegate shall:

(1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).

(2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods employed in reaching such conclusions; and

(3) Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

S. 1916.2 Definitions.

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

S. 1916.3 Establishment of community case file and flood elevation study docket.

(a) A file shall be established for each community at the time initial consideration is given to studying that community in order to establish whether or not it contains flood-prone areas. Thereafter, the file shall include copies of all correspondence with officials in that community. As the community is tentatively identified, provided with base flood elevations, or suspended and reinstated, documentation of such actions by the Administrator shall be placed in the community file. Even if a map is administratively rescinded or withdrawn after notice under Part 1915 of this subchapter or the community successfully rebuts its flood-prone designation, the file will be maintained indefinitely.

(b) A portion of the community file shall be designated a flood elevation study consultation docket and shall be established for each community at the time the contract is awarded for a flood elevation study. The docket shall include copies of (i) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Federal Insurance Administration representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (ii) relevant publications, (iii) a copy of the completed flood elevation study, and (iv) a copy of the Administrator's final determination.

(c) A flood elevation determination docket shall be established and maintained in accordance with Part 1917 of this subchapter.

S. 1916.4 Appointment of Consultation Coordination Officer.

The Administrator shall appoint an employee of the Department of Housing and Urban Development, or other designated Federal employee, as the Consultation Coordination Officer (CCO) for each community when a contract is awarded for a Flood Elevation Study, and in writing, shall advise the community and the appropriate state coordinating agency or official for the state in which the community is located of the designation of the CCO.

S. 1916.5 Responsibilities of CCO:

(a) The CCO shall be responsible for arranging consultation among appropriate officials of a community in which any proposed Flood Insurance Study is undertaken, the state coordinating agency, and the organization under contract or the auspices of the Federal Insurance Administration undertaking the study.

(b) The CCO shall encourage local dissemination of surveys, studies, and investigations so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(c) The CCO shall be responsible for encouraging the submission of community information concerning the study by providing sample press releases or other materials to accomplish such purpose.

1916.6 Duties of CCO:

(a) The primary duty of a CCO is to provide consultation with appropriate officials of the community so that they may be fully informed of (i) the responsibilities placed on them by the Program, (ii) the administrative procedures followed by the Federal Insurance Administration, (iii) the community's role in developing the FIRM, and (iv) the responsibilities of the community if it participates or continues to participate in the Program.

(b) Before the commencement of the community's proposed Flood Insurance Study, the CCO for the community in which the study is to be conducted, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend it. At this meeting, the CCO shall inform the local officials of (i) the date when the study will commence, (ii) the nature and purpose of the study, (iii) the areas involved, (iv) the manner in which the study shall be undertaken, (v) the general principles to be applied, and (vi) the intended use of the data obtained.

(c) After a Flood Insurance Study has commenced in any community, the CCO for that community shall serve as a liaison among the local officials, the state coordinating agency, and the organization undertaking the study in order to keep all interested parties informed as to the progress of the study.

PART 1917--~~Appeals~~ from proposed flood elevation determinations

Sec.

- 1917.1 Purpose of Part.
- 1917.2 Definitions.
- 1917.3 Establishment and maintenance of a flood elevation determination docket (FEDD).
- 1917.4 Proposed flood elevation determination.
- 1917.5 Right of appeal.
- 1917.6 Basis of appeal.
- 1917.7 Collection of appeal data.
- 1917.8 Appeal Procedures.
- 1917.9 Final determination in the absence of an appeal by the community.
- 1917.10 Rates during pendency of final determination.
- 1917.11 Notice of final determination.
- 1917.12 Appeal to district court.

Authority: Sec. 1374(a), 82 Stat. 574 (42 U.S.C. 4012)

Section 1917.1 Purpose of Part.

The purpose of this Part is to establish procedures implementing the provisions of Section 110 of Flood Disaster Protection Act of 1973.

Section 1917.2 Definitions

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

Section 1917.3 Establishment and maintenance of a flood elevation determination docket (FEED).

The Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

- (a) The name of the community subject to the flood elevation determination;
- (b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;
- (c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;
- (d) A copy of the notice of the proposed flood elevation determination published in the Federal Register;
- (e) Copies of all appeals by private persons received by the Administrator from the CEO;
- (f) Copies of all comments received by the Administrator on the notice of the proposed flood elevation determination published in the Federal Register;
- (g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;
- (h) A copy of the flood insurance study for the community;
- (i) A copy of the FIRM for the community;
- (j) Copies of all materials maintained in the flood elevation study consultation docket; and
- (k) A copy of the final determination with supporting documents.

Section 1917.4 Proposed flood elevation determination.

The Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the Federal Register;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

Section 1917.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made pursuant to Section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Administrator's proposed determination.

Section 1917.6 Basis of appeal.

The sole basis of an appeal under this Part shall be the possession of knowledge or information indicating that the elevations proposed by the Administrator are scientifically or technically incorrect.

Section 1917.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's proposed flood elevation determination and shall be placed in the FEDD.

Section 1917.8 Appeal Procedure

(a) If a community appeals the proposed flood elevation determination, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based.

(b) The Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in Part 1918 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under Section 1917.12.

(e) The Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with Section 1917.12.

Section 1917.9 Final determination in the absence of an appeal by the community

(a) If the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with Section 1917.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in Section 1917.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals.

Section 1917. 10 Rates during pendency of final determination.

Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to purchase flood insurance at the subsidized rate.

After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin not later than six months after the final flood elevation determination.

Section 1917.11 Notice of final determination.

The Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the Federal Register, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

1917.12 Appeal to district court.

(a) An appellant aggrieved by the final determination of the Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Secretary shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with the provisions of 5 U.S.C. 706.

Part 1918--Administrative hearing procedures

Sec.

- 1918.1 Purpose of Part.
- 1918.2 Definitions.
- 1918.3 Right to administrative hearings.
- 1918.4 Judge.
- 1918.5 Establishment of docket.
- 1918.6 Time and place of hearing.
- 1918.7 Conduct of hearings.
- 1918.8 Scope of review.
- 1918.9 Admissible evidence.
- 1918.10 Burden of proof.
- 1918.11 Right of judge to obtain scientific or technical advice.
- 1918.12 Determination.
- 1918.13 Relief.

Authority: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4012).

Section 1918.1 Purpose of Part.

The purpose of this Part is to establish procedures for appeals of the Administrator's base flood elevation determination, whether proposed pursuant to Section 1363(e) of the Act (42 U.S.C. 4102) or modified because of changed conditions or the availability of additional newly acquired scientific or technical information.

S. 1918.2 Definitions

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

Section 1918.3 Right to administrative hearings.

An administrative hearing under this Part shall only be held if a community appeals the Administrator's flood elevation determination established pursuant to S. 1917.8, or otherwise, and the Administrator has determined that such appeal cannot be resolved by consultation with officials of the community, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

Section 1918.4 Judge.

Each hearing shall be conducted by an Administrative Law Judge (hereinafter "Judge") certified by the Civil Service Commission or by a Hearing Officer (hereinafter "Judge") designated by the Secretary.

S. 1918.5 Establishment of docket.

The General Counsel shall establish a docket for appeals referred to him by the Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the FEDD file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements and other legal documents, a transcript of the hearing, and the judge's final determination.

S. 1918.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the judge for that hearing. He shall promptly advise the Administrator and the General Counsel of such designation.

(b) The judge's notice of the time and place of hearing shall be sent by the General Counsel's Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing must be sent no less than 30 days before the date of hearing unless such period is waived by all appellants.

1918.7 Conduct of hearings.

(a) The judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Administrator shall be represented by the General Counsel or his designee.

(c) All appeals made by appellants in each community shall be consolidated and one administrative hearing shall be held for any one community unless the judge for good cause shown grants a separate appeal or appeals.

(d) If the appeal is brought by the community, the CEO or his designee shall represent all appellants from that community; provided that any appellant may petition the judge to allow such appellant to make an appearance on his own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) The Administrator shall assure that a transcribed verbatim record is made of the proceeding which shall be available for inspection by any appellant. An appellant may order copies of the transcribed verbatim record directly from the reporter and shall be responsible for payments.

S. 1918. **8** Scope of review.

Review at administrative hearings shall be limited to an examination of knowledge or information presented by each appellant indicating that elevations proposed by the Administrator are scientifically or technically incorrect.

S 1918.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at administrative hearings. However, only evidence relevant to issues within the scope of review under Section 1918.8 shall be admissible.

(b) The community's FEDD file shall be admissible.

(c) Documentary and testimonial evidence shall be admissible.

(d) Admissibility of non-expert testimony shall be within the discretion of the judge.

(e) Where the appeal is by other than a community, the community's statement of reasons for not appealing shall be admissible.

(f) All testimony shall be under oath.

S. 1918.10 Burden of proof.

The burden shall be on appellants to prove that the flood elevation determination is not scientifically or technically correct.

S. 1918.11 Right of judge to obtain scientific or technical advice.

The judge may submit conflicting technical or scientific data to an independent scientific body or appropriate Federal agency for advice.

S. 1918.12 Determination.

The judge shall make a written determination on the evidence presented at the hearing within 30 days after the conclusion of the hearing.

S. 1918.13 Relief

The sole relief which shall be granted under this Part is a modification of the Administrator's proposed determination by the judge in accordance with his determination under S. 1918.12. This modification shall be binding on the Administrator.

PART 1919 RESERVED

PART 1920 - - PROCEDURE FOR MAP CORRECTION

Mapping Inefficiencies Unrelated to
Community-Wide Elevation Determinations

Sec.

1920.1 Purpose of Part.

1920.2 Definitions.

1920.3 Right to submit technical information.

1920.4 Review by Administrator.

1920.5 Amendment to flood maps by letter.

1920.6 Distribution of Letter of Map Amendment.

1920.7 Notice of Letter of Map Amendment.

1920.8 Premium refund after Letter of Map Amendment.

AUTHORITY: Sec. 1304(a), 92 Stat. 574 (42 U.S.C. 4011).

S. 1920.1 Purpose of Part.

The purpose of this Part is to provide an administrative procedure whereby the Federal Insurance Administrator (Administrator) will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1-99, VO and V1-30 Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either a FHBM or FIRM. Where there has been a final base flood elevation determination, any alteration of the topography shall not be subject to this procedure. Appeals of such determinations are subject to the provisions of Part 1917 of this subchapter.

S. 1920.2 Definitions.

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

S. 1920.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1-99, V0 and VI-30 Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for his review.

(b) Scientific and technical information for the purpose of this Part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest floor (including basement) of the structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resource.), a County Water Control District, a County or City Engineer, a Federal Insurance Administration Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor of the type of structure and that the lowest floor (including basement) of the structure is above the base flood level. Where there has been a final flood elevation determination, and fill has altered the topography, such certification should include the date that the fill was placed on the property.

S. 1920.4 Review by the Administrator.

The Administrator, after reviewing the scientific or technical information submitted under the provisions of S. 1920.3 of this Part, shall notify the applicant in writing of his determination within 60 days from the date of receipt of the applicant's scientific or technical information that:

- (a) The property is within a designated A, A0, A1-99, V0 or V1-30 Zone, and shall set forth the basis of such determination; or
- (b) The property should not be included within a designated A, A0, A1-99, V0, or V1-30 Zone and that the FHBM or FIRM will be modified accordingly; or
- (c) An additional 60 days is required to make a determination.

S. 1920.5 Letter of Map Amendment.

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of S. 1920.4(b) of this Part, the Administrator shall issue a Lette. of Map Amendment which shall state:

(a) The name of the Community to which the map to be amended was issued;

(b) The number of the map;

(c) The identification of the property to be excluded from a designated

A, AO, A1-99, VO or V1-30 Zone.

S. 1920.6 Distribution of Letter of Map Amendment.

(a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Administrator.

(b) A copy of the Letter of Map Amendment shall be sent to the local map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.

(c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.

(d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.

(e) A copy of the Letter of Map Amendment shall be sent to the National Flood Insurers Association.

(f) A copy of the Letter of Map Amendment will be maintained by the Federal Insurance Administration in its community case file.

S. 1920.7 Notice of Letter of Map Amendment.

The Administrator shall publish a notice in the FEDERAL REGISTER that the FHRM or FIRM map for a particular community has been amended by letter determination issued pursuant to this Part.

S. 1920.8 Premium refund after letter of map amendment.

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this Part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in Section 1912.5 of this subchapter.

PART 1921. RESERVED

PART 1922. RESERVED

PART 1924. RESERVED

PART 1923. RESERVED

PART 1925--EXEMPTION OF STATE-OWNED PROPERTIES
UNDER SELF-INSURANCE PLAN

Subpart A--General

Sec.

1925.1 Purpose of Part.

1925.2 Definitions.

1925.3 Burden of Proof.

Subpart B--Standards for Exemption

1925.10 Applicability.

1925.11 Standards.

1925.12 Application by a State for Exemption.

1925.13 Review by the Administrator.

1925.14 States Exempt Under this Part.

Authority: The provisions of this Part 1925 issued under 7(d),
79 Stat. 670; 42 U.S.C. 3535(d); and 42 U.S.C. 4128.

Subpart A--General

S. 1925.1 Purpose of Part.

(a) The purpose of this Part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, AO, M, V, VO, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

S. 1925.2 Definitions

The definitions set forth in Part 1909 of this subchapter are applicable to this Part.

S. 1925.3 Burden of Proof.

In any application made by a State to the Administrator for certification of its self-insurance plan, the burden of proof shall rest upon the State making application to establish that its policy of self-insurance is adequate and equals or exceeds the standards provided in this Part.

Subpart B--Standards for Exemption

S. 1925.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, AO, M, V, VO and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

S. 1925.11 Standards.

(a) In order to be exempt under this Part, the State's self-insurance plan shall, as a minimum:

(1) Constitute a formal policy or plan of self-insurance created by statute or regulation authorized pursuant to statute.

(2) Specify that the hazards covered by the self-insurance plan expressly include the flood and flood-related hazards which are covered under the Standard Flood Insurance Policy.

(3) Provide coverage to state-owned structures and their contents equal to that which would otherwise be available under a Standard Flood Insurance Policy.

(4) Consist of a self-insurance fund and/or a commercial policy of insurance or reinsurance for which provision is made in statute or regulation and which is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, AO, M, V, VO, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements

of paragraph (5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage which would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Administrator as A, AO, M, V, VO, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, AO, M, V, VO, and E Zones. The inventory shall: (i) include the location of individual structures; (ii) include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and (iii) include an estimate of the anticipated annual loss due to flood damage.

(6) Provide the flood loss experience for State-owned structures and their contents based upon incurred losses for a period of not less than the 5 years immediately preceding application for exemption, and certify that such historical information shall be maintained and updated.

(7) Include, pursuant to Section 1910.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, AO, M, V, VO, and E Zones.

(b) The Administrator shall determine the adequacy of the insurance provisions whether they be based on available funds, an enforceable commitment of funds, commercial insurance, or some combination thereof, but has discretion to waive specific requirements under this Part.

S. 1925.12 Application by a State for Exemption

Application for exemption made pursuant to this Part shall be made by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in Section 1925.11 of this subpart.

S. 1925.13 Review by the Administrator

(a) The Administrator may return the application for exemption upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the self-insurance plan.

(b) Upon determining that the State's plan of self-insurance is inadequate, the Administrator shall in writing reject the application for exemption and shall state in what respects the plan fails to comply with the standards set forth in Section 1925.11 of this subpart.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in Section 1925.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the Administrator as A, AO, M, V, VO, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this Part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

(d) Documentation which cannot reasonably be provided at the time of application for exemption shall be submitted within six months of the application date. The Administrator may revoke his certification for a State's failure to submit adequate documentation after the six month period.

S. 1925.14 States exempt under this Part.

The following States have submitted applications and adequate supporting documentation and have been determined by the Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Maine, Georgia.

